FARM LABOR CONTRACTOR REGISTRATION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ECONOMIC OPPORTUNITY

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 8232, H.R. 8233, H.R. 8234, H.R. 8249, H.R. 8894,
H.R. 10053, H.R. 10631, H.R. 10810, H.R. 10922

TO AMEND THE FARM LABOR CONTRACTOR REGISTRATION
ACT OF 1963, AS AMENDED, AND FOR OTHER PURPOSES

HEAINGS HELD IN WASHINGTON, D.C. ON
FEBRUARY 22 AND 23, 1978

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*

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Compliments
Congressman Ike Andrews, Chairman
Subcommittee on Economic Opportunity
Room 320 Cannon H O B
U. S. House of Representatives

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FARM LABOR CONTRACTOR REGISTRATION ACT

WEDNESDAY, FEBRUARY 22, 1978

House of Representatives,
Subcommittee on Economic Opportunity
of the Committee on Education and Labor,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to call, in room 2261, Rayburn House Office Building, Hon. Ike F. Andrews (chairman of the subcommittee) presiding.

Members present: Representatives Andrews and Goodling.

Staff present: William F. Causey, counsel; Neil B. Krugman, majority staff; and Edith C. Baum, counsel for labor, minority.

Mr. Andrews. In 1963 the Congress found that there was a need to regulate the activities of certain individuals and organizations who were engaged in the activity of contracting for the services of workers in agricultural employment. As a result of that finding the Congress passed the Farm Labor Contract Registration Act.

After nearly a decade of enforcement of the act by the Department of Labor, the Congress significantly amended the act in 1974. Now, after an additional period of time with respect to the operation of this act, numerous bills have been introduced to further amend the act in several significant respects.

The hearings today and tomorrow are for the purpose of examining the bills which have been filed and to ascertain the manner in which the Department of Labor is currently administering this legislation. The subcommittee is pleased to hear from several of my colleagues who have introduced bills to amend the act and from numerous individuals who have direct experience with its application and who are particularly knowledgeable about the act's purpose and effect.

[Text of H.R. 8232, H.R. 8233, H.R. 8234, H.R. 8249, H.R. 8894, H.R. 10053, H.R. 10631, H.R. 10810, H.R. 10922 follow:]

[H.R. 8232, 95th Congress, 1st sess.]

A BILL To exempt from coverage under the Fair Labor Contract Registration Act of 1963 any person who engages in farm labor contracting solely within a seventy-five-mile radius of his home

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(b)(4) of the Farm Labor Contractor Registration Act of 1963 is amended to read as follows:

"(4) any person who engages in such activity solely within a seventy-five-mile radius of his permanent place of residence;".

[H.R. 8233, 95th Congress, 1st sess.]

A BILL To amend the Fair Labor Contractor Registration Act of 1963 by providing that the term "migrant worker" excludes any individual who returns to his place of permanent residence on a daily basis

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(g) of the Farm Labor

Contract Registration Act of 1963 is amended by inserting before the period ", and whose employment in agriculture or agricultural labor as the case may be, requires travel of a kind which prevents that individual from returning to his permanent residence on a daily basis".

[H.R. 8234, 95th Congress, 1st sess.]

A BILL To exempt from coverage under the Fair Labor Contractor Registration Act of 1963 any person who engages in farm labor contracting solely for the purpose of supplying migrant workers who return each day from their places of employment to their permanent residences

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(b) of the Farm Labor Contractor Registration Act of 1963 is amended by striking out the period in paragraph (7) and inserting in lieu thereof "; and" and by adding at the end the following new paragraph:

"(8) any person who engages in such activity solely for the purpose of supplying migrant workers who return each day from their places of employment to the permanent residences.".

[H.R. 8249, 95th Congress, 1st sess.]

A BILL To amend the Farm Labor Contractor Registration Act of 1963 to exempt from its coverage persons engaged in activities within a fifty-mile intrastate radius of their permanent place of residence and for not more than twenty-six weeks

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3(b)(4) of the Farm Labor Contractor Registration Act of 1963 is amended by striking out "twenty-five" and inserting in lieu thereof "fifty", and by striking out "thirteen" and inserting in lieu thereof "twenty-six".

[H.R. 8894, 95th Congress, 1st sess.]

A BILL To amend the Farm Labor Contractor Registration Act of 1963, as amended, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Labor Contractor Registration Act Amendments of 1977".

SEC. 2. Section 3(b)(1) of the Farm Labor Contractor Registration Act of 1963, as amended, is amended by inserting the word "or" between the words "nonprofit" and "charitable".

SEC. 3. Section 3(b)(2) of such Act is amended by striking the word "personally" and by inserting immediately prior to the semicolon the following ", including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, or packed in or diverted from its own operation".

SEC. 4. Section 3(b)(3) of such Act is amended by inserting the words "bona fide" before the word "full-time" and before the word "regular" and striking the language "on no more than an incidental basis".

SEC. 5. Section 3(b)(7) of such Act is amended by inserting the language "or fully qualified charter carrier" immediately following the word "carrier".

SEC. 6. Section 3(c) of such Act is amended by striking the word "includes" and substituting therefore the word "means" and inserting immediately after the word "consideration", the language "in excess of the actual cost of providing such services".

SEC. 7. Section 3(g) of such Act is amended by inserting the language "on a seasonal or other temporary basis" after the reference to the Fair Labor Standards Act of 1939 (29 U.S.C. 203(f)), and by inserting immediately before the period, the language "and who is transported from and to his or her permanent domicile each work day in a vehicle owned or controlled by a farm labor contractor, or who cannot regularly return to his or her permanent domicile each day after working hours".

SEC. 8. Section 3 of such Act is further amended by adding new subsections "(h)", "(i)", and "(j)" to read as follows:

"(h) The term 'transport' means to own or to control either directly or indirectly, the vehicle or conveyance in which migrants are transported under such circumstances as would impose legal liability for the operation of that vehicle or conveyance upon the individual or entity owning or controlling it.

"(i) The term 'bona fide full-time employee' means an employee who is employed the year around by any entity referred to in subsection (b)(1) or (b)(2) of this section.

"(j) The term 'bona fide regular employee' means an employee who is regularly employed on a seasonal basis by any entity referred to in subsection (b)(1) or (b)(2) of this section and who engages in such activity solely for his employer.".

[H.R. 10053, 95th Congress, 1st sess.]

A BILL To amend the Farm Labor Contractor Registration Act of 1963, as amended, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Labor Contractor Registration Act Amendments of 1977".

SEC. 2. Section 3(b)(2) of such Act is amended by striking the word "personally" and by inserting immediately prior to the semicolon the following: ", including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, or packed in or diverted from its own operation".

SEC. 3. Section 3(b)(3) of such Act is amended by inserting the words "bona fide" before the word "full-time" and before the word "regular" and striking the language "on no more than an incidental basis".

SEC. 4. Section 3(c) of such Act is amended by striking the word "includes" and substituting therefor the word "means" and inserting immediately after the word "consideration" the language "in excess of the actual cost of providing such services".

SEC. 5. Section 3(g) of such Act is amended by inserting the language "on a seasonal or other temporary basis" after the reference to the Fair Labor Standards Act of 1939 (29 U.S.C. 203(f)).

SEC. 6. Section 3 of such Act is further amended by adding new subsections "(h)", "(i)", and "(j)" to read as follows:

"(h) The term 'transport' means to own or to control either directly or indirectly, the vehicle or conveyance in which migrants are transported.

"(i) The term 'bona fide full-time employee' means an employee who is employed the year around by any entity referred to in subsection (b)(1) or (b)(2) of this section.

"(j) The term 'bona fide regular employee' means an employee who is regularly employed on a seasonal basis by any entity referred to in subsection (b)(1) or (b)(2) of this section and who engages in such activity solely for his employer.".

SEC. 7. Section 14 of such Act is amended by striking out all that follows "law" and substituting therefor a period.

[H.R. 10631, 95th Congress, 2d sess.]

A BILL To amend the Farm Labor Contractor Registration Act of 1963 as amended, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Labor Contractor Registration Act Amendments of 1977".

SEC. 2. Section 3(b)(1) of such Act is amended by inserting the language "bona fide nonprofit agricultural cooperative engaged in such activity solely for its members," before the word "public".

SEC. 3. Section 3(b)(2) of such Act is amended by striking the word "personally" and by inserting immediately prior to the semicolon the following: ", including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, or packed in or diverted from its own operation".

SEC. 4. Section 3(b)(3) of such Act is amended by inserting the words "bona fide" before the word "full-time" and before the word "regular" and striking the language "on no more than an incidental basis" and substituting therefor the following: "and who is not, during any substantial continuous portion of the year, engaged in recruiting migrant workers from more than one hundred miles from the place of agricultural employment.".

SEC. 5. Section 3(g) of such Act is amended by inserting the language "on a seasonal or other temporary basis" after the reference to the Fair Labor Standards Act of 1939 (29 U.S.C. 203(f)).

SEC. 6. Section 3 of such Act is further amended by adding new subsections (h), (i), (j), and (k) to read as follows:

"(h) The term 'transport' means to own or to control either directly or indirectly, the vehicle or conveyance in which migrants are transported.

"(i) The term 'bona fide full-time employee' means an employee who is employed by the year around by any entity referred to in subsection (b)(1) or (b)(2) of this section.

"(j) The term 'bona fide regular employee' means an employee who is regularly employed on a seasonal basis by any entity referred to in subsection (b)(1) or (b)(2) of this section.

"(k) The term 'bona fide nonprofit agricultural cooperative' means a nonprofit corporation or agricultural cooperative operating on a nonprofit basis solely fo the benefit of its members all of whom are farmers or farmer cooperatives and most of whom continue as members year after year.".

SEC. 7. Section 5(a)(2) of such Act is amended by inserting immediately prior to the semicolon a new sentence as follows: "If such applicant has filed proof satisfactory to the Secretary of the existence of a policy of workmen's compensation insurance which insures the payment of workmen's compensation benefits under State law for personal injury or death to migrant workers by accident arising out of and in the course of their employment in connection with his business, activities, or operations as a farm labor contractor, the policy of vehicle liability insurance provided by him shall conform to the exclusive remedy provisions of the State workmen's compensation law".

SEC. 8. Section 5(a) of such Act is amended by adding a new subsection (6) to read as follows:

> "(6) has made available to the Secretary a copy of all records required to be kept and of all information required to be provided to any migrant worker under section 6(e) of the Act, and of all payroll records required to be kept by such contractor under Federal law.".

SEC. 9. Section 6(e) of such Act is amended by striking out the following: "He shall additionally provide to the person to whom any migrant worker is furnished all information and records required to be kept by such contractor under this subsection, and all information required to be provided to any migrant worker under this subsection.".

SEC. 10. Section 14 of such Act is repealed.

[H.R. 10810, 95th Congress, 2d sess.]

A BILL To amend the Farm Labor Contractor Registration Act of 1963 as amended to exclude from the requirement of registering as farm labor contractors certain farmers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Labor Contractor Registration Act Amendments of 1978".

SEC. 2. (a) Section (3)(b)(2) of the Farm Labor Contractor Registration Act of 1963 as amended (7 U.S.C. 2042(b)(2)) is amended to read as follows:

> "(b)(2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman who engages in any such activity solely for his own operation or who engages in such activity on behalf of a farmer whose farm is located within twenty-five miles of the permanent place of residence of such farmer, processor, canner, ginner, packing shed operator, or nurseryman and whose fee does not include money other than reimbursement of actual expenses incurred;".

[H.R. 10922, 95th Congress, 2d sess.]

A BILL To amend the Farm Labor Contractor Registration Act of 1963, as amended, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Farm Labor Contractor Registration Act Amendments of 1977".

SEC. 2. Section 3(b)(1) of the Farm Labor Contractor Registration Act of 1963, as amended, is amended by inserting the word "or" between the words "nonprofit" and "charitable".

SEC. 3. Section 3(b)(2) of such Act is amended by striking the word "personally" and by inserting immediately prior to the semicolon the following ", including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, or packed in or diverted from its own operation".

SEC. 4. Section 3(b)(3) of such Act is amended by inserting the words "bona fide" before the word "full-time" and before the word "regular" and striking the language "on no more than an incidental basis".

SEC. 5. Section 3(b)(7) of such Act is amended by inserting the language "or fully qualified charter carrier" immediately following the word "carrier".

SEC. 6. Section 3(c) of such Act is amended by striking the word "includes" and substituting therefore the word "means" and inserting immediately after the word "consideration", the language "in excess of the actual cost of providing such services".

SEC. 7. Section 3(g) of such Act is amended by inserting the language "on a seasonal or other temporary basis" after the reference to the Fair Labor Standards Act of 1939 (29 U.S.C. 203(f)), and by inserting immediately before the period, the language "and who is transported from and to his or her permanent domicile each work day in a vehicle owned or controlled by a farm labor contractor, or who cannot regularly return to his or her permanent domicile each day after working hours".

SEC. 8. Section 3 of such Act is further amended by adding new subsections "(h)", "(i)", and "(j)" to read as follows:

"(h) The term 'transport' means to own or to control either directly or indirectly, the vehicle or conveyance in which migrants are transported under such circumstances as would impose legal liability for the operation of that vehicle or conveyance upon the individual or entity owning or controlling it.

"(i) The term 'bona fide full-time employee' means an employee who is employed the year around by any entity referred to in subsection (b)(1) or (b)(2) of this section.

"(j) The term 'bona fide regular employee' means an employee who is regularly employed on a seasonal basis by any entity referred to in subsection (b)(1) or (b)(2) of this section and who engages in such activity solely for his employer.".

We are honored and pleased to have as our first witnesses two very distinguished colleagues, Mr. John McFall and Mr. Bernie Sisk.

Mr. McFALL. Thank you. I will start and yield to my friend, Mr. Sisk, who has to go to another committee and he will make a short statement, then put his statement in the record, and I would yield at the time to my neighbor who is in the next district to me in California, Mr. Sisk.

STATEMENT OF HON. B. F. SISK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SISK. Thank you. In particular I want to thank my colleague from California, Mr. McFall. He and I have served side by side well over 20 years. I am only here basically to fully support the statement which Mr. McFall will make and, Mr. Chairman, I have a prepared statement which I would ask be made a part of the record following the statement by Mr. McFall, and it basically, as I say, endorses the legislation and endorses his position, and I would also ask unanimous consent for some backup material to be included with that statement, Mr. Chairman, and again thank you very much. And I thank my colleague, Mr. McFall, for this opportunity.

Mr. ANDREWS. Thank you, and we will be pleased, of course, to include the full text of your statement and whatever materials you have in the record.

Mr. SISK. Thank you, very much.

[The statement of Mr. Sisk follows:]

TESTIMONY OF REPRESENTATIVE B. F. SISK OF CALIFORNIA

Mr. Chairman, Members of the Subcommittee, I want to join with my other colleagues who have or will be testifying before you today for your willingness to address the Farm Labor Contractor Registration Act. To be quite frank, I thought we had perfected it in 1974, but the actions and interpretations of the U.S. Department of Labor indicate just the contrary.

As my colleague from California, Mr. McFall, has indicated, we are basically seeking here a legislative attempt to reinterpret for the Department of Labor the congressional intent of the 1974 amendments.

While a strong supporter and cosponsor of H.R. 10053, I do feel that certain aspects of other bills addressing this subject have appeal and I would trust the subcommittee reviews them most carefully. I will elaborate on this in a minute.

However, I do want to present just a few short statements in support of the specific provisions of H.R. 10053.

Representative McFall has already addressed the question of the Department of Labor's use of the word "personally," and the fact that this is a matter before the Federal courts, so I would like to stress two other issues in which Secretaries of Labor may not be clear on congressional intent.

Former Assistant Secretary of Labor Bernard Delury, testifying before the Subcommittee on Agricultural Labor on October 1, 1975, laid down some "clarifying" thoughts regarding section 3(b)(3) dealing with a farmer's full-time or regular employee who secures migrant workers for his employer. Unfortunately, Mr. Delury did not pay attention to a letter directed to the Department by former subcommittee Chairman William Ford, and this current administration has only continued to compound the abuse.

Mr. Delury stated that section 3(b)(3) does not exempt all full-time employees of a farmer from registering as a farm labor contractor. In that, those of us who deal with this, agree. However, we do feel that such an employee should be exempt if his farm labor contracting activities are not part of his primary job responsibility.

This is precisely what Representative Ford told former Secretary of Labor John Dunlop. In a letter dated July 21, 1975, Representative Ford stated: * * * it is the committee's intent that foremen and similar bona fide employees will not have to register as Farm Labor Contractors if it can be shown, for example, that they are full-time and permanent employees of an employer, who utilizes a limited portion of their time for activities as defined in section 3(b) of the Act.

Secretary of Labor Ray Marshall has further compounded this in his letter of August 23, 1977. A copy of that has been made available by Representative McFall, and I will not repeat it at this time.

While Secretary Marshall cites the Senate report on this as to what constitutes Congressional intent, I would like to call to his attention, and this Subcommittee's, the colloquy between Senators Lawton Chiles and Gaylord Nelson during debate of the 1974 amendments to the Farm Labor Contractor Registration Act.

"Mr. CHILES. Mr. Prseident will the Senator yield?

"Mr. NELSON. I yield.

"Mr. CHILES. Many of the growers in my State and I have a concern with a particular section of this bill. Under the provision for exemption of fulltime or regular employees of farmers, processors, canners, ginners, packing shed operators, or nurserymen who are exempt, the bill specifies that the exemption will apply if the recruitment activity is solely for his employer on no more than an incidental basis. I can understand that registration should be required of the individual whose sole job is to hire and recruit migrant labor. To do otherwise would allow for a circumvention of the purposes of the bill.

"However, my concern is with the term "incidential". I do not think the committee report adequately explains what is meant by incidental duty of employment. I do not feel that the committee intended that regular employees who perform some duties for their employer relative to securing migrant labor are to be required to register. It is my understanding that the bill aims at those who on a fulltime basis hire or recruit migrant labor. I would appreciate if the distinguished Senator from Wisconsin would clarify this point for me.

"Mr. NELSON. Mr. Presdent, the purpose of this provision is to prevent farm labor contractors from avoiding registration by becoming the employee of each and every grower for whom they recruit and hire migrant workers, while at the same time providing an exemption under the act for the regular employee of a grower whose duties may include recruiting and hiring solely for this employer. The intent is stated on page 7 of the Senate report (S. Rept. No. 93–1206) on H.R. 13342, which reads as follows:

"In addition, there is a new exemption for his fulltime or regular employees if their recruitment activity constitutes only an incidental duty of employment and is performed solely for him.

"So I think that the committee report and this colloquy make it clear.

"Mr. CHILES. To qualify that a little, the fact that he, being a permanent employee, has the activity as one of his responsibilities would not cause him to have to register, so long as he had some basis of showing that he was a permanent employee, had been, and had other duties. Even though this duty might be considered to be an important aspect of his job responsibility by his employer, the employer might say, "It is your job to do this a portion of the year," if he were a permanent employee and continued to have other duties, he would not be considered to have to register.

"Mr. NELSON. The Senator is absolutely correct in the manner in which he has stated it."

Based on this, Mr. Chairman, I feel Section 3 of H.R. 10053 is a realistic answer if the situation cannot be handled administratively. As noted earlier, the Department refuses to address this, so it may be that Congress should once again state its intent.

A second issue I would like to address in this involves vehicle liability coverage for workers being transported by registered farm labor contractors. Again, the Senate debate on this helps clarify a costly rule by the Secretary of Labor. Senator Harrison Williams, in colloquy on October 6, 1974, stated that the Farm Labor Contractor Registration Act amendments "permits the Secretary of Labor to accept liability insurance in amounts less than that required by the Interstate Commerce Commission."

I would like to leave with the Subcommittee copies of correspondence I have had on this specific matter for review. Hopefully, Mr. Chairman, you will address this and review sympathetically a legislative remedy proposed by Representative Andy Ireland in his bill H.R. 10631. He will further elaborate, I am sure.

In closing, Mr. Chairman, I urge that this Subcommittee report out a bill clarifying Congressional intent so that the Labor Department can address these questions in a manner intended. I sincerely hope that this can be done in this Congress, and I want to pledge to you my willingness to assist toward this goal.

Thank you.

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE ASSISTANT SECRETARY FOR EMPLOYMENT STANDARDS,
Washington, D.C., November 10, 1977.

Hon. BERNIE F. SISK,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN SISK: This is in response to your letter dated September 1. 1977 with which you enclosed correspondence from Mr. Steve Copland of the California State Compensation Insurance Fund, regarding the vehicle insurance requirements for a farm labor contractor under the Farm Labor Contractor Registration Act, as amended.

Section 5(b)(2) of the Act provides the statutory basis for the insurance requirements applicable to vehicles used by a farm labor contractor in either the interstate or intrastate transportation of migrant workers, in connection with his business, activities, or operations as a farm labor contractor. Section 5(a)(2) requires the insurance be at least the amount currently applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act or amounts offering comparable protection.

The insurance that a farm labor contractor must have pursuant to Section 5(a)(2) of the Act is prescribed in 29 CFR 40.14 as follows:

	12 or less passengers	More than 12 passengers
Limit for bodily injuries to or death of 1 person	$100,000	$100,000
Limit for bodily injuries to or death of all persons injured or killed in any 1 accident (subject to a maximum of $100,000 for bodily injuries to or death of 1 person)	300,000	500,000
Limit for loss or damage in any 1 accident to property of others (excluding cargo)	50,000	50,000

Section 40.14 provides that before any person may transport migrant workers within the meaning of the Act, in any vehicle which the person owns, operates or causes to be operated, compliance with the insurance requirements must be shown by submitting a completed Farm Labor Contractor vehicle liability Certificate of Insurance showing that the passenger hazard is included, as evidence of liability insurance which covers the workers while being transported.

Paragraph (b) of Section 40.14 states that if the passenger hazard has been excluded from the Certificate of Insurance, the applicant must submit in addition to such certificate a completed Farm Labor Contractor Standard Accident Policy Certificate of Insurance as evidence of the issuance of a Farm Labor Contractor Standard Accident Policy.

There are many reasons why States' workers compensation coverage is not acceptable in lieu of the required Farm Labor Contractor Automobile Liability Certificate of Insurance. Workers compensation policies vary with each State in accordance with the mandate of the particular State legislation. Liability under such policies is limited to work related actvities or the work related area and is effective only where the passengers are clearly "employees" of the insured employer. The prescribed farm labor contractor insurance protection also extends to any persons, whether occupants of a contractor's vehicle, other vehicles, pedestrians, or who in any manner incur injury, death or property damage, because of a farm labor contractor's motor vehicle operations. Such third parties are not covered, of course, by State workers compensation plans which have only the employer within their purview. In addition, liability under State workers compensation plans would not extend to the times migrant workers are being transported from one employer to a prospective employer. Also, such State workers compensation plans do not extend to protect members of migrant families being transported.

I hope the above information will clarify our position on this matter.

Sincerely,

DONALD ELISBURG, *Assistant Secretary.*

Enclosures.

EXECUTIVE: LABOR—FARM LABOR,
September 1, 1977.

Hon. DONALD ELISBURG,
Assistant Secretary of Labor for Employment Standards, U.S. Department of Labor, Washington, D.C.

DEAR MR. ELISBURG: On April 7, 1977, over the signature of Acting Administrator Warren Landis, a response to my letter of March 11 regarding dual insurance coverage required of California farm labor contractors was submitted to me. Attached, in response to Mr. Landis' answers, is a rebuttal from a district representative of the State Compensation Insurance Fund.

I would appreciate your review of Section 6 of P.L. 93–518, the Farm Labor Contractor Amendments, which, in essence, limits the insurance matter to the transportation of passengers in interstate commerce, and respond to Mr. Copland's information.

Your review and response to this in as timely a manner as possible will be deeply appreciated.

With kind regards.

Sincerely,

B. F. SISK, *Member of Congress.*

Enclosures.

STATE COMPENSATION INSURANCE FUND,
August 12, 1977.

Hon. BERNIE SISK,
Fresno, Calif.

DEAR CONGRESSMAN SISK: This letter is in regard to the Federal Farm Labor Contractor Registration Act and the liability insurance requirements that it imposes for those contractors who provide bus transportation for their employees.

My understanding of the current situation is that when the Federal FLC Registration Act *originally* went into effect, California labor contractors were exempted from the *vehicle* liability insurance requirements, due to the fact that California workers' compensation insurance was more than adequate in meeting these requirements.

On July 29, 1976, when the current regulations went into effect, the exemption, that California labor contractors had, was removed from the Act. (See attached copy of memorandum from U.S. Dept. of Labor, Mr. Ronald J. James.)

In the letter from Mr. Warren Landis of the U.S. Dept. of Labor (see attached copy), there is a statement to the effect that the reason the California exemption was not put into the new regulation was that, "The benefits available under California workers' compensation laws are substantially less than the amount of insurance protection for bodily injury or death of one person specified in 29 CFR 40.14."

In response to this statement, my views are essentially that a California farm labor contractor's employees receive full protection through the coverage afforded by a California workers' compensation policy.

Mr. Landis' explanation of the reasoning underlying the Department of Labor's decision to discontinue allowing a California workers' compensation policy to meet the FLC Registration Act's requirement with regard to transportation accidents seems to be erroneous.

His primary justification seems to be that a separate liability policy or rider is necessary, even though it results in a duplication of coverage and premium, because Section 5(a)(2) essentially requires $100,000 per person and 300,000 per accident benefit limits (see attached copy of Regulations, Part 40) while the California Workers' Compensation Act only provides for a maximum of $55,000 per person as a *death benefit.*

The deficiency in his argument is that the workers' compensation policy provides not a limit of $55,000 (which is only the current death benefit limit), nor the $100,000 and $300,000; but, it is *unlimited* as to coverage.

That is, there are *no limits* on the amount of medical and disability payments per employee (passenger), nor any limit per accident (Section 4600 California Labor Code).

Granted, the California workers' compensation policy does not provide coverage for damage to the *employee's property* in the event of a bus accident; but, that is a type of coverage that could be obtained rather inexpensively (and, usually, the employees that are passengers in a farm labor contractor's bus have a minimum of personal property).

This requirement that a contractor obtain a separate policy covering accidents to his employees while being transported is difficult to obtain and expensive and is, in my opinion a duplication of his California workers' compensation policy. In reality, a labor contractor is being forced to purchase duplicate insurance and, hence, pay for liability insurance that he will never be using.

This State's judicial rulings have continuously found that the transportation of employees to and from work sites by a farm labor contractor is clearly within the scope of the California Workers' Compensation Act, which, per Section 3601 of the California Labor Code, is the exclusive remedy for industrial injuries.

In summarizing, I feel that farm labor contractors are being forced to purchase "duplicate liability insurance" to cover their employees while they are being transported. In the event of an accident, I am certain that California's workers' compensation insurance will be the insurance that will provide benefits.

I hope this gives you additional insight into the problem now facing numerous labor contractors.

Anything you can do to alleviate this current situation would sincerely be appreciated.

Thank you for your time and assistance regarding this matter.

If you have any questions, please do not hesitate to give me a call.

Sincerely,

STEVE COPLAND, *District Representative.*

U.S. DEPARTMENT OF LABOR,
EMPLOYMENT STANDARDS ADMINISTRATION,
WAGE AND HOUR DIVISION,
Washington, D.C., April 7, 1977.

Hon. BERNIE SISK,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN SISK: This is in response to your letter of March 11, 1977 regarding the vehicle insurance requirements under the Farm Labor Contractor Registration Act.

A prospective farm labor contractor who wishes to transport workers must show satisfactory proof of financial responsibility or the existence of a policy of insurance which insures such person against liability for damages to persons or property arising out of his or her ownership of, operation of, or causing to be operated any vehicle for the transportation of migrant workers in connection with such person's business, activities, or operations as a farm labor contractor. See Section 5(a)(2) of the Act (copy enclosed).

Because of the higher premium costs necessitated by the increased insurance, the question arose as to whether workers' compensation coverage could serve in meeting, wholly or in part, the statutory insurance requirement. Our study of this matter revealed that workers' compensation laws varied from State to State, some benefiting farm workers to a lesser degree than others. Also many State workers' compensation laws were unclear as to their application to the transportation of migrant farmworkers. In these circumstances, it was administratively infeasible to incorporate such varied and unclear State laws in meeting the Federal statutory requirements. Accordingly, when the current regulations were finalized in July 1976, no basis was provided in the pertinent sections, 29 CFR 40.14 through 40.19, for offsetting vehicle liability insurance with workers' compensation coverage. Thereafter, our San Francisco Regional Office was directed to discontinue issuing farm labor contractor certificates of registration with transportation authorization based on workers' compensation coverage.

The benefits available under California's Workmen's Compensation laws are substantially less than the amount of insurance protection for bodily injury or death of one person specified in 29 CFR 40.14. Hence, coverage by the State Workmen's Compensation law does not meet the more stringent requirement specified in Section 5(a)(2) of the Federal statute.

It is our policy to work closely with the States to make certain that the required insurance is available to farm labor contractors. Our Regional Office listed at the address below reports no problems on availability of insurance to farm labor contractors and can assist them: Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, Rm. 10353, San Francisco, California 94102, telephone: 415-556-3592.

I hope this information will be helpful. Enclosed for your convenience are copies of the Act and the Regulations.

Sincerely,

WARREN D. LANDIS, *Administrator.*

Enclosures.

EXECUTIVE: LABOR—FARM LABOR,
March 11, 1977.

Mr. DONALD ELISBURG,
Assistant Secretary for Employment Standards,
U.S. Department of Labor, Washington, D.C.

DEAR ASSISTANT SECRETARY ELISBURG: It has been brought to my attention by California state officials involved with state workmen's compensation that farm labor contractors are being forced to basically overinsure their employees.

What California officials point out to me is that under California's licensing program for farm labor contractors the contractor must carry workmen's compensation for workplace injuries. This coverage also includes coverage for that time when the worker is being transported to and from work. In addition, I am told, the federal government requires these same farm labor contractors to carry liability and collision insurance.

Until July 29, 1976, the State of California was exempted from the federal requirement, but this exception was formally withdrawn on August 10, 1976 by order of Ronald James, Administrator, Wage and Hour Division. A copy of that order is attached.

I am told that California insurance carriers are no longer writing the type of insurance that is required by federal regulations because the State's workmen's compensation coverage would be duplicative.

I would appreciate your thorough explanation of why the former exception was lifted and why the federal government would require an unnecessary duplication of coverage.

With kind regards.

Sincerely,

B. F. SISK,
Member of Congress.

Enclosure.

U.S. DEPARTMENT OF LABOR,
EMPLOYMENT STANDARDS ADMINISTRATION,
WAGE AND HOUR DIVISION,
Washington, D.C., August 10, 1976.

Memorandum for: John Silver, Assistant Regional Administrator/Wage-Hour, San Francisco, California.
From: Ronald J. James, Administrator.
Subject: FLCRA Insurance Requirements.

This is with reference to our communication of March 21, 1975 which stated that an FLC who operated entirely within the State of California who was covered by the State's workmen's compensation laws would not be required to have additional liability insurance to cover the workers in the FLC's crew. Regulations Part 40 (29 CFR) published on June 29 and effective on July 29 do not provide a basis for off-setting the vehicle liability insurance requirement with workmen's compensation coverage. See 40.14 through 40.19. Accordingly, you are directed to discontinue issuing FLC certificates with transportation authorized based on worker's compensation insurance coverage. Proof of financial responsibility as specified by the Regulations will be required in all cases. Outstanding certificates will not be affected, however, renewals must be in accordance with the Regulations. You may wish to consider notifying holders of outstanding certificates of the renewal requirements for certificates with transportation authorized.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND LABOR,
SUBCOMMITTEE ON AGRICULTURAL LABOR,
Washington, D.C., July 21, 1975.

Hon. JOHN T. DUNLOP,
Secretary, U.S. Department of Labor,
Washington, D.C.

DEAR MR. SECRETARY: On numerous occasions, both in letters and during the course of hearings, I have expressed to the Department my concern that the Farm Labor Contractor Registration Act be strictly enforced to protect migrant and seasonal farmworkers from abuse and exploitation by unscrupulous crew leaders. Last year, with the cooperation of the Department, we were successful in strengthening this Act by enacting the Farm Labor Contractor Registration Act Amendments of 1974 (P.L. 93–518).

However, it has recently come to my attention that the Department may be administering this law in a manner which is contrary to Congressional intent. I have been informed that compliance officers from the San Francisco Regional Office have on more than one occasion informed full-time employees (such as foremen) of farmers in and around San Joaquin County that they must register under the provisions of the Act. It is my understanding that, although these employees are engaged in transporting migrant workers from a meeting place in town to their employer's farm, they do so only incidentally in conjunction with many other duties which their job requires. According to my interpretation of the Act, this was not the way the Congress intended it to be administered.

As you know, section 3(b) of the Act, which defines Farm Labor Contractor, specifically excludes "any farmer * * * who personally engages in such activity for the purpose of supplying migrant workers solely for his own operation."

Section 3(b)(3) excludes "any full-time or regular employee * * * who engages in such activity solely for his employer on no more than an incidental basis.'

In your interpretation of this section I would like to call your attention to identical language which appears in both the House Report (H.R. Rep. No. 93–1493, p. 7) and the Senate Report (S. Rep. No. 93–1295, pp. 7–8). This language provides:

In addition, the exemption in section 3(b)(3) of the Act has been revised to apply to any full-time or regular employees of any entity referred to in section 3(b)(1) or (2) if their covered activity is performed on no more than an incidental basis and is performed solely for such entity. While employment relationships vary, *it is the Committee's intent that foremen and similar bona fide employees will not have to register as Farm Labor Contractors if it can be shown, for example, that they are full-time and permanent* *employees of an employer, who utilizes a limited portion of their time for activities as defined in section 3(b) of the Act* (emphasis added).

It would seem to me that the above-cited language leaves little doubt that the Congress did not intend that the Act be construed in a manner that would require a foreman (or other employee) who is a regular full-time employee of a farmer, and who, as part of his many duties, drives from the farm into town and picks up and transports workers to his employer's farm (and returns them to town at the end of the day) to register under the provisions of this Act. However, in light of the reports I have received, I would like to be apprised of your current policy with respect to this exemption.

I would also like to direct your attention to two further questions which have recently been brought to my attention—the interpretation of the term "for a fee" which appears in section 3(b), and the interpretation of the word "personally" in section 3(b)(2).

In light of the 3(b)(3) exemption which excludes "any full-time or regular employee," I would assume that the words "for a fee" would not be construed to include any part of the salary of a full-time or regular employee who, as part of his job, is required to transport workers between a meeting place in the city and his employer's farm. I would like to have your policy with respect to this language clarified, since it has been brought to my attention that some confusion may exist in certain areas of the country.

I would also like to state the Department's policy with respect to a corporate farm which has one or more "full-time or regular employees" engaged in the kinds of activities discussed above in light of the language in section 3(b)(2) which exempts any farmer who "personally" engages in such activity "solely for his own operation." It is my understanding that compliance officers in California are insisting that only one employee from a corporate farm can be designated for this exclusion and I would like this clarified.

Finally, I want to assure you that I, in writing this letter, do not wish in any way to weaken the enforcement of this Act which I worked so hard to see become law. My concern is that enforcement be fair to migrant and seasonal farmworkers and to farmers and their regular employees, and that you concentrate your limited resources on eliminating the abuses which many workers suffer at the hand of unscrupulous crew leaders who meet the definition of "farm labor contractor" as spelled out in the law and the legislative history.

I would appreciate your prompt response to the concerns I have raised in this letter, and a report of your steps to see that this law is strictly enforced in accordance with the intent of Congress.

Sincerely,

William D. Ford, *Chairman.*

STATEMENT OF HON. JOHN McFALL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. McFall. All right, Mr. Chairman, I will go right ahead with my statement.

I want to thank you and the members of the subcommittee for this opportunity to come before you and discuss the Farm Labor Contractor Registration Act. Since the 1973 amendments to this act became effective, and thereby made its registration provisions applicable to farm labor activities taking place solely within a single State, this act has had a profound impact on much of my congressional district in California.

For the subcommittee's information, much of my district is in California's agriculturally rich San Joaquin Valley, where I am the neighbor of Mr. Sisk who just testified. Agriculture is the area's primary industry, and it produces a wide variety of fruits, vegetables, tree nuts, and other commodities. The successful production of these crops requires a significant amount of farm labor, especially during harvest.

Regarding the act, it was my understanding when it was enacted in 1963, and subsequently amended more than 10 years later, that its primary goal was to afford migrant farmworkers protection from unscrupulous crew leaders. In many cases these crew leaders would exercise near total control over migrants. Instances were brought to the attention of the Congress where crew leaders would transport migrants in unsafe and uninsured vehicles; pay them far less than reasonable or minimal wages; and house them in unsafe and unsanitary facilities.

I believe it is clear from the legislative history of the act the Congress wanted to put this kind of crew leader out of operation and out of business. My concern, Mr. Chairman, and the concern of many of my constituents, is that the Department of Labor is not implementing the act in the manner which Congress intended. Specifically, the Department has refused to exempt many farmers and growers from registering as farm labor contractors even though the act specifically provides such an exemption.

Last June I wrote Labor Secretary Marshall on this very point. Congressmen Moss, Sisk, Leggett, and Johnson of California joined me in signing that letter. It was our hope that the Department would address this topic reasonably and that legislation would not be necessary. Unfortunately, the Secretary's August letter of response made it clear that the intent of the Congress in enacting this Act could only be achieved through further legislation. That is why I testify today.

With your permission, Mr. Chairman, I request that a copy of my June 30, 1977 letter to Secretary Marshall, and the Secretary's August 23, 1977 response be included in the hearing record after my statement.

Mr. ANDREWS. All right.

[The letters referred to follow:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 30, 1977.

Hon. F. RAY MARSHALL,
Secretary, Department of Labor,
Washington, D.C.

DEAR MR. SECRETARY: We are writing in regards to the Department of Labor's policy on the registration of farmers as farm labor contractors under the provisions of the Farm Labor Contractor Registration Act of 1963 as amended.

In particular, we are concerned over the department's narrow interpretation of the exemption from registration for farmers under Section 3(b)(2) and for a farmer's full-time or regular employee under Section 3(b)(3).

Section 3(b)(2) provides that a farmer who "personally" performs the functions of a farm labor contractor solely for supplying migrant workers for his own operations is not required to register. Section 3(a) defines "person" to include any individual, partnership, association, joint stock company, trust, or corporation. And yet, in the cases of partnerships, associations, joint stock companies, trusts and corporations, the Department of Labor has allowed exemption under Section 3(b)(2) on only a selective basis. We draw your attention to the statement of Assistant Secretary of Labor Bernard E. Delury before the House Subcommittee on Agricultural Labor on October 1, 1975, which states in part:

> In adding the word "personally" the 1974 amendments narrowed the exemption for growers to those individuals who *in person* engage in farm labor contracting activities for themselves. While this language is clear with respect to sole proprietors, interpretative problems do arise with respect to partner-

ships, associations, joint stock companies, trusts and corporations. Such entities should not be able to obtain exemptions under Section 3(b)(2) in their own right, because of their inability to act "personally." However, when such an entity is under the effective control of an individual and his authority is equivalent to that possessed by a sole proprietor, the exemption might apply to that individual, if he acts personally with respect only to farm labor contracting activities at the operation involved. We recognize that such an interpretation may raise problems of proof, as well as other legal problems, which will have to be more thoroughly addressed on a case-by-case basis.

We believe the Department's interpretation is mis-applied. The policy enunciated in Section 3(b)(2) is clear. If an agricultural enterprise needs migrant workers, it is not required to obtain the services of a registered farm labor contractor to secure workers. Instead it can perform the functions of a farm labor contractor, provided it does so only on behalf of its own agricultural operations. We recognize that the Department, through its regulation may wish to require non-sole proprietorships to identify a single individual who will "personally" perform this function. But Section 3(b)(2) does not necessitate the Department applying this exemption on a "case-by-case basis."

Section 3(b)(3) provides that a farmers full-time or regular employee who secures migrant workers exclusively for his employer on no more than an incidental basis shall not be required to register as a farm labor contractor. In his October 1, 1975, statement of the Department's position, Assistant Secretary Delury stated, "Clearly this language does not provide an exemption from the application of the law to all full-time employees. Certainly an employee of a grower, whether full-time or not, who devotes all of his time or the majority of his time to farm labor contractor activities is not within the exemption and such an employee should register under the law." We agree, however, this is far from a comprehensive statement of the applicability of this provision.

We believe that such an employee should be exempt if his farm labor contractor activities are not included as part of his primary job responsibilities even though the same employee may perform this function when needed. Clearly the total amount of time an employee spends on farm labor contractor activities is a factor that must be considered, and we believe the Department should clearly enunciate its position on this issue.

We would appreciate receiving your views on these provisions. The Department of Labor's policies for implementing these provisions are of vital concern to California agriculture, and we may wish to meet with you in the future to discuss this subject further.

We appreciate your consideration of this matter, and look forward to hearing from you on it.

Sincerely yours,

John J. McFall,
Member of Congress.
Robert L. Leggett,
Member of Congress.
John E. Moss,
Member of Congress.
B. F. Sisk,
Member of Congress.
Harold T. Johnson,
Member of Congress.

U.S. Department of Labor,
Office of the Secretary,
Washington, D.C., August 23, 1977.

Hon. John J. McFall,
House of Representatives,
Washington, D.C.

Dear Congressman McFall: This is in response to your letter of June 30, 1977, regarding the Department of Labor's policy on the registration of farmers as farm labor contractors under the Farm Labor Contractor Registration Act, as amended. Your particular concern is with this Department's narrow interpretation of the exemption from registration for farmers under Section 3(b)(2) and for farmer's full-time or regular employees under Section 3(b)(3). You cite the statement by then Assistant Secretary Bernard E. Delury before the House Subcommittee on Agricultural Labor with respect to these sections of the Act.

By adding the word "personally" in Section 3(b)(2) in 1974, Congress apparently narrowed the applicability of this exemption to an individual. Thus, this section would apply to a sole proprietorship whose owner performs any of the named farm labor contracting activities in person and "solely for his own operation." With regard to a partnership, since each partner is both a principal and an agent, each partner who performs any of the covered farm labor contracting activities solely for his own operation would be acting "personally". The applicability of the term "personally" is thus clear with respect to a sole proprietorship or a partner of a partnership.

Although the term "person" as defined in the Act includes partnerships associations, joint stock companies, trusts or corporations, as well as individuals, it is apparent that each such entity must be viewed in a different light insofar as the application of Section 3(b)(2) is concerned. These entities are not entitled to the exemption under Section 3(b)(2) in their own right because they cannot act personally but only through an agent or representative. However, if a farmer is a corporation, the term "personally" may apply if the corporation is under the effective control of an individual whose authority is equivalent to that of a sole proprietor, and if that individual acts in person with respect to the farm labor contracting activities for the corporation. In such case, the exemption could apply.

Under the principles stated above, the application of Section 3(b)(2) to a farmer personally engaged in farm labor contracting activities solely for his own operation appears clear with respect to sole proprietorships, partnerships and corporations which are under the effective control of an individual. Any changes in the application of the Act to include corporations which cannot act personally would require, in my opinion, legislative action on the part of the Congress. The above principles were adopted only after careful consideration and are believed to follow Congress' intent in adopting the language of the statute.

Additionally, an employee of an exempt person, within the meaning of Section 3(b)(3), is not automatically entitled to claim the exemption unless the employee also meets the requirements of Section 3(b)(3) of the Act.

To be entitled to the exemption provided by Section 3(b)(3), a person must (1) be an employee of a farmer or other person referred to in Sections 3(b)(1) or 3(b)(2); (2) be a full-time or regular employee of such person; (3) engage in any of the covered farm labor contracting activities referred to in Section 3(b) solely for that employer and (4) participate in such activities "on no more than an incidental basis."

The phrase "on no more than an incidental basis" is not defined by the Act. The legislative history makes it clear that it was the intent of Congress that only those full-time or regular employees who utilize only a limited portion of their time for farm labor contracting activities could qualify for the exemption under Section 3(b)(3). As stated on pages 7 and 8 of the Senate Report No. 93-1295: "* * * While employment relationships vary, it is the Committee's intent that foreman and similar bona fide employees will not have to register as Farm Labor Contracts if it can be shown for example, that they are full-time and permanent employees of an employer who utilizes a limited portion of their time for activities as defined in Section 3(b) of the Act."

There are many kinds of participation in covered farm labor contractor activities referred to in Section 3(b) by full-time or regular employees of farmers or other persons referred to in Section 3(b)(1) or 3(b)(2). Engagement in such farm labor contractor activities may be a principal or a peripheral function as related to the employee's overall duties. There also may be seasonal fluctuations. Yet such activities may be part of the employee's regular or assigned duties which are performed on a regular and recurring basis.

The Department, in considering the application of the Section 3(b)(3) exemption, takes into account all of the above factors. No single element would control and all the various related factors would be considered including the relationship of the amount of time spent performing farm labor contracting activities as compared to the total work time.

In addition, the importance of the farm labor contractor activities must ultimately be determined in relation to the totality of the employee's duties based on the time, frequency, nature and indispensability of the employees in performing such duties. Thus, to be more than incidental the farm labor contracting activities need not be the only duties of the employee. It is sufficient to be more than "on an incidental basis", in our opinion, if the farm labor contracting activities are one of the major or principal functions of the individual's job.

Representatives of the Employment Standards Administration would be pleased to meet with you to discuss this subject further.

Sincerely,

Ray Marshall, *Secretary of Labor.*

Mr. McFall. On November 4, I introduced the bill H.R. 10053 which was cosponsored by several other members. The primary provision of this bill, sections 2 and 3, seek to require the Department of Labor to enforce the act's 1973 amendments as originally intended by the Congress.

Section 2 of the bill deals with section 3(b)(2) of the act. That provision states that any farmer who "personally" obtains migrant workers solely for his own agricultural operations shall not be considered a farm labor contractor, and thereby need not be registered as such by the Department. The Department of Labor, however, has refused to provide this exemption in many cases involving incorporated farms. The Department rests its position on the interpretation that corporations cannot act "personally." The act further contradicts the Department by defining the word "person" to include a corporation.

The issue of corporate inclusion under the section 3(b)(2) exemption was addressed by the U.S. District Court of the Eastern District of California last August. A ruling by that court in the case of *Ray Marshall, Secretary of Labor* v. *Silver Creek Packing Company*, states:

> The Government next urges that a corporation cannot be exempt because section 3(b)(2) exempts only those who "personally" engage in such activities, and a corporation must act through agents. However, section 3(a) of the Act defines the term "person" to include corporations. The legislative history shows that Congress was trying to regulate the middleman who was taking advantage of both the farmer and the migrant worker and not the farmer who employs direct. Therefore, defendant is entitled to the exemption as it hires migrants solely for its own operation and the injunction is denied.

Mr. Chairman, I request that a copy of the District Court's August 23, 1977 ruling, from which I just quoted, be included in the hearing record after my statement.

Mr. Andrews. Without objection.

[A copy of the ruling referred to follows:]

In the United States District Court for the Eastern District of California

No. F–76–25 Civ.

Ray Marshall, Secretary of Labor, United States Department of Labor, plaintiff

v.

Silver Creek Packing Company, a Corporation, defendant

Memorandum and Order

This action was brought by the Secretary of Labor under Section 12(c) of the Farm Labor Contractor Registration Act of 1963 as amended, to enjoin defendant from acting as a farm labor contractor without registering.

Defendant, Silver Creek Packing Company, claims exemption under Section 3(b)(2) which exempts "any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation."

The testimony established that defendant is a California corporation which pursuant to a marketing agreement signed with the farmer, picks, hauls, packs, ships and sells farm produce. This marketing agreement gives defendant complete control over the crop as soon as it has matured.

Defendant does employ migrant workers in the picking, hauling and packing operations but claims these are the operations of the corporation and thus they are exempt.

The Government urges that since the defendant does not buy the crop in the field it is really supplying pickers for the farmer. But, defendant's control over the produce makes picking the operation of the defendant.

The Government next urges that a corporation cannot be exempt because section 3(b)(2) exempts only those who "personally" engage in such activities, and a corporation must act through agents.

However, section 3(a) of the Act defines the term "person" to include corporations.

The legislative history shows that Congress was trying to regulate the middleman who was taking advantage of both the farmer and the migrant worker and not the farmer who employs direct.

Therefore, defendant is entitled to the exemption as it hires migrant workers solely for its own operation and the injunction is denied.

Defendant is to prepare findings of fact, conclusive of law and form of judgment in accordance with the Local Rules.

Dated: August 23, 1977.

M. D. CROCKER,
United States District Judge.

Mr. McFALL. I believe it is clear in the act that the Congress did not intend for a farmer who may have incorporated for a tax or other purposes to be denied the exemption. This position is further substantiated by the judicial ruling to which I have referred. I therefore hope that the subcommittee will favorably consider language, such as contained in H.R. 10053, to prohibit the Department from continuing to deny this exemption.

Another major provision of my bill deals with section 3(b)(3) of the act. Here again, we are not dealing with the middleman or crew leader or full time farm labor contractor who make their income by supplying migrant workers, but rather, this provision addresses the operations of a farmer who makes his income from the crop he produces.

Section 3(b)(3) provides that any full-time or regular employee of a farmer who obtains migrant workers solely for his employ "on no more than an incidental basis" shall not be considered a farm labor contractor, and thereby need not register under the act.

The problem here is in determining what constitutes "no more than an incidental basis." The Department of Labor has defined it so narrowly that the practical use of this exemption is basically eliminated. Clearly that was not the intent of the Congress in enacting the exemption.

Consequently, the farmer is left in a very odd situation. Even if he is exempt from registering, his farm foreman will probably have to register. The difference is purely a matter of semantics, because in registering the foreman, the farmer is being registered as well. And what does registration involve? As a registered farm labor contractor, the foreman must maintain voluminous records on each migrant employed. Additionally, the foreman must supply a copy of all of these records to the farmer, his employer. Of course, the foreman must each year also apply for renewal of his registration with all the forms and records that are involved.

And what is the point? If a migrant has a labor related complaint against a farmer or a farmer's foreman, the Department of Labor can always locate the farm. A farmer is not some fly by night crew leader who can skip the county before the Department can track him down. There is a clear need for the crew leader or middleman to be required to register. We don't question this. But that need simply does not exist in the case of a farmer and his full-time regular employees.

The act exempts the farmer who personally obtains migrant workers solely for his own farm, so why should his foremen be required to register when performing exactly the same function for exactly the same purpose?

It is for these reasons that I hope the subcommittee will favorably consider language that will allow section 3(b)(3) to be effective, as the Congress originally intended.

Finally, the last section of my bill addresses another problem confronting the farmer under the act. Section 14 of the act requires a farmer to receive and maintain from a farm labor contractor all the records the contractor is required to make under Section 6(e). These records are quite detailed and can easily be voluminous. If the contractor fails to provide these records to the farmer, the farmer has two choices. He can refuse to allow the migrants secured by the contractor to work on his farm, and thereby quite possibly threaten the successful harvesting of his crop. Or he can violate the act and allow the migrants to harvest his crop.

This a very difficult choice for the farmer. In some cases it forces him to choose between the harvesting of his crop and the law. In essence this section of the act attempts to make the farmer the policeman enforcing a Federal statute. I do not believe it is fair to place the farmer in this position. I have no objection to requiring the farm labor contractor to make and maintain precise employment records, and requiring him to provide such records to the Department of Labor. But the farmer should not be required to do the Department's work.

I hope, therefore, that the subcommittee will examine section 14 of the act and favorably consider an amendment to remove the farmer from this predicament.

Mr. Chairman, when I introduced H.R. 10053 last November, I was hopeful that another problem under the act could be resolved administratively. Unfortunately, since that time it has become clear that legislative action will be required. The issue is the dual insurance coverage of workmens compensation and the insurance required of a farm labor contractor by the act. If a farm worker is covered by workmens compensation under certain circumstances, then a contractor should not be required to obtain separate insurance coverage for those same circumstances.

Such dual coverage is not necessary, and it results in farm workers being more insured than other nonagricultural workers. It is my understanding that my colleague Bernie Sisk, who has been devoting particular attention to this issue, will discuss this subject more fully in his testimony just put into the record, and so for your deliberations you will have his more detailed statement. I hope the subcommittee will favorably consider an amendment that addresses this topic.

Mr. Chairman, I want to thank you for allowing me this chance to present my views on the Farm Labor Contractor Registration Act. My overriding concern is that the Congressional intent embodied in the act be adhered to by the Department of Labor. I hope I have made it clear that this concern primarily relates to the Departments efforts regarding the farmer, not the crew leader or farm labor contractor.

Thank you.

Mr. ANDREWS. Thank you, Congressman McFall, and I assure you that the committee will give very close attention to the several points you have made in your statement, and I believe you asked that a copy of the court order of August 23, 1977 be included in the record?

Mr. MCFALL. Yes, sir.

Mr. ANDREWS. That shall be done.

Mr. MCFALL. Thank you.

Mr. ANDREWS. It is just coincidence the letter to you from the Secretary and the decision of the Court to which you refer are both dated August 23, 1977?

Mr. MCFALL. I hadn't thought of that before but that is a coincidence, isn't it?

Mr. ANDREWS. It certainly is.

Very well, thank you, sir.

Mr. MCFALL. Thank you.

[Prepared statement of Congressman McFall follows:]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., February 28, 1978.

Hon. IKE F. ANDREWS, *Chairman,*
Subcommittee on Economic Opportunity,
Washington, D.C.

DEAR IKE: I want to thank you again for the opportunity to appear before the subcommittee on February 22, to discuss the Farm Labor Contractor Registration Act and my bill H.R. 10053.

During the two days of hearings, numerous references were made to the provisions of H.R. 10053, some of which disregard the intent of parts of my bill, and others that misrepresented H.R. 10053 totally. We both know the difficulties of drafting legislation to solve only the problem intended and not create new and unintended difficulties. I certainly do not believe that the language contained in H.R. 10053 offers the only possible solution to the problems I discussed in my testimony. I know the subcommittee will exercise great care in drafting any amendments it considers wise.

I do not intend to restate all the points raised in my testimony, but because of some of the statements made in the hearings, I do want to draw your attention to a few items discussed.

Section 4 of my bill deals with defining the word "fee". My concern is that the Department of Labor is applying the current language in the Act to situations that clearly should not be covered. Specifically, if a farmer will have a two week break between the harvesting of two of his crops, he may ask his neighbor if he needs farm workers for that two week period. This is beneficial to the first farmer since it guarantees that he will have a group of workers of sufficient size and with whom he is familiar, to work his second harvest. No money is exchanged between the farmers in consideration for the shifting of employment of the workers from one farm to the other.

The phrase "in excess of the actual cost of providing such services" was included to allow for either farmer to be reimbursed by the other for any costs incurred as a result of the transfer or any equipment shared between them. The Department of Labor interprets this testimony transfer of workers to constitute a fee since the original farmer is receiving something of value, namely that his workers will return to his farm when he needs them. The department's position applies even if a farmer stops his operations for a single day, possibly as a result of a death in his family, but who none the less seeks to find his workers a days work on a neighboring farm so that they do not lose a day's wages.

It is not the intent of Section 4 of H.R. 10053 to provide a loophole that would permit crew leaders or other farm labor contractors, who make their living by regularly and routinely supplying laborers to farmers, to escape the registration requirements of the Act. I do not support any change in the Act that would have this result. I hope that the subcommittee will examine this situation to determine if it could support language that would correct the department's position in the situation I described above.

Section 2 of my bill strikes the word "personally" from the Section 3(b)(2) exemption of the Act. I noted with particular interest the department's statement in the hearing that it was unable to determine from the legislative history of the 1974 Amendments what the Congress intended the term "personally" to mean. The department's statement seems to beg for legislative clarification on this term. Besides that, if the Congress intended this term to eliminate the exemption's applicability to incorporated firms, as the department maintains, then the terms "processor, canner, ginner" should have been eliminated by the 1974 Amendments since I know of no processor, canner or ginner that is not incorporated.

Section 3 of H.R. 10053 amends the Section 3(b)(3) exemption of the Act and includes the striking of the phrase "on no more than an incidental basis." Statements made during the hearings indicated that such an amendment would provide an opportunity for crew leaders to become a regular or seasonal employee of one or more farmers and thereby escape the registration requirements of the Act. This is not the intent of Section 3 of my bill. The possibility of creating such a loophole must be eliminated. It may be that this potential loophole could be avoided by restricting an individual farm foreman or employee who claims this exemption to providing these services to only one farmer during any given calendar year. For the reasons set forth in my testimony, I hope that the subcommittee will seriously consider an amendment to Section 3(b)(3) that will afford a farm foreman the same exemption available to his employer, a farmer, under Section 3(b)(2).

Section 7 of H.R. 10053 amends Section 14 of the Act which specifies the recordkeeping requirements placed on anyone furnished migrant workers by a farm labor contractor. The testimony of Assistant Secretary of Labor Donald Elisburg pointed out that the department opposes Section 7 of H.R. 10053 for two reasons.

First: As you know, farm labor contractors are highly mobile and it is frequently difficult to locate records which may be necessary to pursue enforcement actions where violations have occurred. By requiring the users to obtain and maintain these records, we are able to facilitate enforcement of the Act.

And second: Also, the users of the contractor service are, together with the contractor, joint employers of the farmworkers. By placing an obligation on the users, the Act helps to assure that farmworkers are treated fairly and in a manner consistent with the law.

In light of these comments by the department, an examination of the language of Section 14 of the Act is appropriate. This section has two basic parts. The first requires any person who utilizes migrant workers supplied by a farm labor contractor to maintain "all payroll records required to be kept by such person under Federal law." H.R. 10053 would not change this requirement. The second part of Section 14 of the Act requires that "with respect to migrant workers paid by a farm labor contractor such person shall also obtain from the contractor and maintain records containing the information required to be provided him by the contractor under Section 6(e) of the Act." H.R. 10053 would eliminate this second part of Section 14, but the effect would not be as the department testified.

Since the farmer and the farm labor contractor are joint employers of the farmworkers, the first part of Section 14 would require the farmer to keep payoll records on each farmworker. In essence, therefore, the only change H.R. 10053 would make in striking out the second part of Section 14 would be to eliminate the requirement that the farmer *receive from the contractor* the records the contractor is required to keep under Section 6(e). As I pointed out in my testimony, a farmer is placed in a very difficult position if a farm labor contractor does not provide him with these records. He can refuse to allow the migrants secured by the contractor to work on his farm, and thereby quite possibly threaten the successful harvesting of his crop. Or he can violate the Act and allow the migrants to harvest his crop. I do not believe the farmer should be placed in this position of choosing between his crop and the law. The burden on the farmer by the requirement that he "receive" these records from the contractor is made even worse by Section 9(b)(1) of the Act which allows the department to assess on him a civil money penalty of up to $1,000 for each violation.

The problem, therefore, really is not the recordkeeping requirement, but rather the requirement that the farmer must receive these records from the contractor. The department cites the mobility of the contractors, but since the Act requires the contractor to notify the department of his new address within ten days of any move, the department's contention is spurious. H.R. 10053 does not in any way alter the Act's requirements that the contractor maintain the required payroll records, nor does it alter the requirement that the contractor provide a copy of these records to the farmer. It also does not alter the requirement that the farmer maintain records. It simply removes the requirement that the farmer receive the records from the contractor.

I appeciate your further consideration of these points, and I hope this clarifies the intent and purposes of H.R. 10053. If possible, I would appreciate it if this letter could become a part of the printed hearing record.

Sincerely yours,

JOHN J. MCFALL, *Member of Congress.*

Mr. ANDREWS. I noticed in the audience, my colleague from North Carolina, Congressman Bill Hefner, who I know has a considerable interest in this legislation and has on prior occasions discussed at least some of those interests with me.

Congressman Hefner, do you have any statement to make to the Committee?

Mr. HEFNER. Yes.

STATEMENT OF HON. WILLIAM HEFNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. HEFNER. Thank you.

Mr. Chairman and members of the subcommittee, I am grateful for the opportunity to be able to speak here today on the need to exempt "day haul" labor from coverage under the Farm Labor Contractor Registration Act.

I have a prepared statement which I would like to be inserted in the hearing record, and I would like to summarize my statement for you here now. I don't want to take a whole lot of your time this morning, but I do want to emphasize a few points which I feel sure will be gone over by other witnesses.

I have introduced three separate bills to exempt day haul labor from coverage under the Farm Labor Contractor Registration Act. I have simply offered them as possible solutions to a problem. I do not know which of the three, if any, is the best solution to the problem, but I hope you will agree with me that a problem exists and I hope we can work together to find a solution.

This is a problem facing certain of my constituents, agricultural employers as well as employees, because of the 1974 amendments to the Farm Labor Act. I cannot say personally how widespread this problem is. I do know for certain that it exists in North Carolina. I feel certain it exists in other States and I hope further testimony here today will illustrate for you its extent.

When the Farm Labor Contractor Registration Act was amended in 1974 to correct problems in the original 1963 law, day haul labor was included for the first time.

I cannot say that this inclusion was an oversight on the part of Congress in 1974 and that day haul operators were inadvertently included under the law at that time. I know this is a popular reason often used for undoing something we've already done.

But the legislative history of the 1974 amendments makes it clear that most day haul labor was intentionally included.

I would ask you to reexamine those intentions and to consider, in the light of experience since 1974, whether this may have been unnecessary and may have created additional, unexpected problems.

The basic purpose of the 1963 act and the 1974 amendments, as I understand them, is to protect a certain class of workers. Workers who, for various reasons, cannot protect themselves from exploitation and abuse. Migrant workers, because of the nature of their employment, do not have effective remedies available to them to solve these problems. Because they travel across State lines, they lose much of the protection that a State will afford its own permanent residents. Because their job opportunities are largely dictated to them by their crew leaders, they cannot seek better jobs on their own. Because they often work thousands of miles away from home, they are not free to leave their jobs when the conditions of their work are not satisfactory. Because of all this, they are at the mercy of crew leaders and in too many instances, there has been little mercy shown them.

Day haul workers are not migrant workers, as this term is commonly understood to mean. And day haul operators, who transport these workers to their jobs, are not crew leaders in the usual sense of this term.

However, under our Federal law, as it was amended in 1974, there is distinction between these two different kinds of employes and employers. The law covers all seasonal agricultural workers. Nothing in the law refers to migrant in the sense that it involves travel away from home, in search for work. Nor do the exclusions for certain kinds of farm labor contractors cover day haul operations.

I think there is an important distinction between day haul workers and migrant workers.

In North Carolina, day haul workers are almost always, local, permanent residents of the area in which they work. They are protected by State and local laws to the same extent as other permanent residents of the area—full-time farm workers, part-time farm workers, and industrial workers. Day haul workers have a more direct relationship with their employer and do not necessarily have to go through a labor contractor to find work. When they do, it is more a matter of mutual convenience rather than economic necessity.

The labor contractors, who engage in day haul operations in North Carolina, are generally small operators whose primary job is not labor contracting. They may be the regular employees of a farmer or orchard owner who do not meet the very strict terms of the exclusion granted to full-time employees who transport workers on no more than an incidental basis. They may also be laborers themselves who transport friends and neighbors to work. They may be independent contractors who transport local workers during certain seasons but who may haul wood and so forth during the rest of the year.

Local agricultural workers, under these circumstances, are not subject to the exploitation and abuse often felt by true migrant workers. If they are, which I do not feel is the case, they have effective remedies under State laws. And most important, they have the economic freedom, which migrants do not, to simply refuse to work for someone who does not treat them fair and square.

I want to emphasize this point because I imagine that some witnesses today will take exception to it. They may argue that many farm day laborers depend solely on this employment for their livelihood and for this reason should be afforded the same protection as migrants. Unfortunately for this argument, the protection of dayworkers under the Farm Labor Contractor Registration Act may have done them more harm than good by actually depriving them of employment opportunities.

The hearings this subcommittee held last August in Raleigh, N.C., pointed this out. Agricultural employers in North Carolina have told me, and they told you at the hearings that it is no longer possible for them to obtain the day labor they used to hire because of the requirements of this law. In fact, in many instances, they have been forced by this situation to hire actual migrant workers instead of local dayworkers. It is ironic that one of the effects of this law, which is to protect migrant workers, would protect migrants by promoting their employment opportunities at the expense of local workers.

The gist of this problem seems to be in the insurance coverage required of anyone defined by the law as a farm labor contractor, whether he transports local day labor or true migrant labor.

The amount of insurance coverage required is very expensive for a small operator, and this cost has effectively forced out many operators who used to provide day labor. Most small farms cannot afford this added overhead.

Certainly no one advocates that these day haul workers go unprotected. But they would still be protected under State insurance requirements to the same extent as all other workers in the State if the Federal requirements were removed.

North Carolina's requirements for insurance on any passenger vehicle—$15,000/$30,000—are still considerably higher than the minimum required under the 1963 law.

I believe we can trust the States to solve this problem for their own permanent residents.

This is not to say that insurance is the only problem caused by coverage of all season dayworkers under the Farm Labor Contractor Registration Act. The recordkeeping and registration requirements under the law and the Labor Department's regulations are time consuming and expensive to meet. They, too, have convinced many persons who formerly supplied dayworkers to drop out of this business.

The effect of these requirements when they are enforced has been to deny local workers the opportunity to work, if they choose to, in the field and orchards or whatever work may be in their State. The North Carolina Employment Security Commission has estimated that the number of day haul workers available in some parts of the State has dropped by as much as four-fifths. This State agency should know, too, because it is often called upon to fill this void with migrant labor from other States.

I believe a case can also be made that the broad coverage of all part-time agricultural workers under the law may well have weakened enforcement of the law to the detriment of those people it is really supposed to protect, the migrants. I can't give you any figures on this, and I imagine the Department of Labor will disagree, but all of us know that our Federal Government has often bitten off more than it could chew. By attempting to do too much with limited resources—in this case, the limited time and personnel of the Department of Labor—it is entirely possible that serious problems are overlooked and unresolved. To the extent that the enforcing agency must spread itself too thin, all workers tend to suffer—those who need the protection of the law and who don't get it as well as those who are adequately protected without the law but who must endure the burdens of Federal regulation.

Mr. Chairman, a valid concern was expressed in the hearings you held in North Carolina, and I am sure it will be expressed by other witnesses here today. That concern is that any changes in the Farm Labor Contractor Registration Act will be a step backward and a weakening of our commitment to insure the fair and just treatment of migrant workers.

Of course, you could amend the law in such a way to do this, but I don't believe you will and I am certainly not proposing that you do so. We can recognize that this law has not solved all the problems faced by migrant workers, and we can amend and strengthen the law to meet these problems. But we must also recognize that some of these problems have not been created by a lack of coverage under the law. They have been created by too much coverage. By focusing the law on the areas of real need, I believe we can do a better job of protecting those who have the real needs. This can be done by exempting local day haul workers from the law.

Mr. Chairman, I would like to thank you for offering me this opportunity to appear before your committee, and I would like to submit my statement for the record at this time.

Mr. ANDREWS. Very well, we will be more than pleased to receive it. That was a very fine statement.

Mr. HEFNER. Thank you, Mr. Chairman.

[The statement of Mr. Hefner follows:]

STATEMENT OF HON. W. G. (BILL) HEFNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman and Members of the Subcommittee, I am grateful for the opportunity to be able to speak here today on the need to exempt "day haul" labor from coverage under the Farm Labor Contractor Registration Act.

I have a prepared statement which I would like to be inserted in the hearing record, and I would like to summarize my statement for you here now. I don't want to take a whole lot of your time this morning, but I do want to emphasize a few points.

I have introduced three separate bills to exempt day haul labor from coverage under the Farm Labor Contractor Registration Act. I have simply offered them as possible solutions to a problem. I do not know which of the three, if any, is the best solution to the problem, but I hope you will agree with me that a problem exists and I hope we can work together to find a solution.

This is a problem facing certain of my constituents, agricultural employers as well as employees, because of the 1974 amendments to the Farm Labor Act. I cannot say personally how widespread this problem is. I do know for certain that it exists in North Carolina. I feel certain it exists in other states and I hope further testimony here today will illustrate for you its extent.

When the Farm Labor Contractor Registration Act was amended in 1974 to correct problems in the original 1963 law, day haul labor was included for the first time.

I cannot say that this inclusion was an oversight on the part of Congress in 1974 and that day haul operators were inadvertently included under the law at that time. I know this is a popular reason often used for undoing something we've already done.

But the legislative history of the 1974 amendments makes it clear that most day haul labor was intentionally included.

This was done mainly by removing the word "interstate" which referred to "agricultural employment," thus covering almost all agricultural employment, whether conducted across state lines or entirely within a single state. A new exemption from the law was added for any person engaging labor within a 25 mile radius of his permanent residence for no more than 13 weeks per year. This exempted some day haul labor, but many more farm operations were included by the 1974 amendments than were exempted.

I would ask you to re-examine those intentions and to consider, in the light of experience since 1974, whether this may have been unnecessary and may have created additional, unexpected problems.

The basic purpose of the 1963 Act and the 1974 Amendments, as I understand them, is to protect a certain class of workers. Workers who, for various reasons, cannot protect themselves from exploitation and abuse. Migrant workers, because of the nature of their employment, do not have effective remedies available to them to solve these problems. Because they travel across state lines, they lose much of the protection that a state will afford its own permanent residents. Because their job opportunities are largely dictated to them by their crew leaders, they cannot seek better jobs on their own. Because they often work thousands of miles away from home, they are not free to leave their jobs when the conditions of their work are not satisfactory Because of all this, they are at the mercy of crew leaders and in too many instances, there has been little mercy shown them.

Day haul workers are not migrant workers, as this term is commonly understood to mean. And day haul operators, who transport these workers to their jobs, are not crew leaders in the usual sense of this term.

However, under federal law as it was amended in 1974, there is no distinction between these two different kinds of employees and employers. The law covers all seasonal agricultural workers. Nothing in the law refers to migrant in the sense that it involves travel away from home, in search of work. Nor do the exclusions for certain kinds of farm labor contractors cover day haul operations.

I think there is an important distinction between day haul workers and migrant workers.

In North Carolina, day haul workers are almost always local, permanent residents of the area in which they work. They are protected by state and local laws to the same extent as other permanent residents of the area—full-time farm workers, part-time farm workers, and industrial workers. Day haul workers have a more direct relationship with their employer and do not necessarily have to go through a labor contractor to find work. When they do, it is more a matter of mutual convenience rather than economic necessity.

The labor contractors, who engage in day haul operations in North Carolina, are generally small operators whose primary job is not labor contracting.

They may be regular employees of a farmer or orchard owner who do not meet the very strict terms of the exclusion granted to full time employees who transport workers on no more than an incidental basis. They may also be laborers themselves who transport friends and neighbors to work. They may be independent contractors who transport local workers during certain seasons but who may haul wood and so forth during the rest of the year.

Local agricultural workers, under these circumstances, are not subject to the exploitation and abuse often felt by true migrant workers. If they are, which I do not feel is the case, they have effective remedies under state laws. And most important, they have the economic freedom, which migrants do not, to simply refuse to work for someone who does not treat them fair and square. I want to emphasize this point because I imagine that some witnesses today will take exception to it. They may argue that many farm laborers depend solely on this employment for their livelihood and for this reason should be afforded the same protection as migrants. Unfortunately for this argument, the protection of day workers under the Farm Labor Contractor Registration Act may have done more harm than good by actually depriving them of employment opportunities.

The hearings this subcommittee held last August in Raleigh, North Carolina pointed this out. Agricultural employers in North Carolina have told me, and they told you at the hearings, that it is no longer possible for them to obtain the day labor they used to hire because of the requirements of this law. In fact, in many instances, they have been forced by this situation to hire actual migrant workers instead of local day workers. It is ironic that one of the effects of this law, which is to protect migrant workers, would protect migrants by promoting their employment opportunities at the expense of local workers.

The gist of this problem seems to be in the insurance coverage required of anyone defined by the law as a farm labor contractor, whether he transports local day labor or true migrant labor.

The required insurance coverage under the 1963 law before it was amended was no less than the amount required by state law, and at least $5,000 for bodily injury or death to any one person and $20,000 total for all passengers involved in an accident. This was raised by the 1974 amendments to be the same as the insurance required by the Interstate Commerce Commission for a common carrier, such as an interstate bus company. This, as I understand it, is for $100,000/$300,000 coverage, and premiums on such insurance can run from as much as $500 to $900 per year.

The amount of insurance coverage required is very expensive for a small operator and this cost has effectively forced out many operators who used to provide day labor. Most small farms cannot afford this added overhead.

Certainly no one advocates that these day haul workers go unprotected. But they would still be protected under state insurance requirements to the same extent as all other workers in the state if the federal requirements were removed.

North Carolina's requirements for insurance on any passenger vehicle ($15,000/$30,000) are still considerably higher than the minimum required under the 1963 law.

I believe we can trust the states to solve this problem for their own permanent residents.

This is not to say that insurance is the only problem caused by coverage of all seasonal day workers under the Farm Labor Contractor Registration Act. The record keeping and registration requirements under the law and the Labor Department's regulations are time-consuming and expensive to meet. They, too, have convinced many persons who formerly supplied day workers to drop out of this business.

The effect of these requirements when they are enforced has been to deny local workers the opportunity to work, if they choose to, in the fields and orchards or whatever work may be in their state. The North Carolina Employment Security Commission has estimated that the number of day haul workers available in some parts of the state has dropped by as much as four-fifths. This state agency should know, too, because it is often called upon to fill this void with migrant labor from other states.

I believe a case can also be made that the broad coverage of all part-time agricultural workers under the law may well have weakened enforcment of the law to the detriment of those people it is really supposed to protect, the migrants. I can't give you any figures on this, and I imagine the Department of Labor will disagree, but all of us know that our federal government has often bitten off more than it could chew. By attempting to do too much with limited resources—in this case the limited time and personnel of the Department of Labor—it is entirely possible that serious problems are overlooked and unresolved. To the extent that the enforcing agency must spread itself too thin, all workers tend to suffer—those who need the protection of the law and who don't get it as well as those who are adequately protected without the law but who must endure the burdens of federal regulation.

Mr. Chairman, a valid concern was expressed in the hearings you held in North Carolina and I am sure it will be expressed by other witnesses here today. That concern is that any changes in the Farm Labor Contractor Registration Act will be a step backwards and a weakening of our commitment to ensure the fair and just treatment of migrant workers.

Of course, you could amend the law in such a way to do this, but I don't believe you will and I am certainly not proposing that you do so. We can recognize that this law has not solved all the problems faced by migrant workers and we can amend and strengthen the law to meet these problems. But we must also recognize that some of these problems have not been created by a lack of coverage under the law. They have been created by too much coverage. By focusing the law on the areas of real need, I believe we can do a better job of protecting those who have the real needs. This can be done by exempting local day haul workers from the law.

The three bills I have introduced for your consideration all work to the same end of exempting day haul labor from coverage under the Farm Labor Contractor Registration Act.

H.R. 8232 would amend the Act by changing those sections in it which have the practical effect of including most day haul operators. It broadens the 25 mile radius within which farm labor contracting operations are exempt to a 75 mile radius, thereby permitting more day haul operators to be exempted from coverage. It also eliminates the word "intrastate" from this section so that the area in which day haul operations are exempted will be drawn without regard to state boundaries. This would apply particularly in areas such as the Sandhills region of North Carolina which lie along state boundaries. It also eliminates entirely the restriction that this exemption applies only to farm labor contracting operations conducted for less than thirteen weeks per year.

I would have to say that this bill is practical rather than philosophical. It accepts the definition of "migrant workers" as including local day haul workers and the definition of "farm labor contractor" as including day haul operators, but it grants to certain of these contractors an exemption from coverage under the law. To the extent that the 25 mile radius in the present exemption is an arbitrary figure which bears little relationship to the size of an actual day labor market, this bill would set a more realistic figure. Such a bill might also be easier to administer since it establishes criteria which can be more or less precisely measured by the enforcing agency.

H.R. 8233 would change the definition of "migrant worker" in the law to fit the commonly understood meaning of the term and to exclude day haul workers. Migrant worker would be defined as an individual whose employment requires travel which prevents him from returning to his permanent residence on a daily basis.

This bill goes directly to the root of the problem, as I see it, by focusing the interest of the law on actual migrant labor, whether interstate or intrastate, which must be housed temporarily away from home. For practical purposes, such a bill might prove to be harder to administer since workers in a labor pool could be migrant, and covered by the law, and non-migrant, and not covered. It would, however, firmly establish the principle and the intent of Congress that only true migrant labor needs the particular protections afforded by the Farm Labor Contractor Registration Act.

H.R. 8234 would provide a specific new exemption for day haul labor operations, defined as supplying workers who return each day from work to their permanent residences.

This bill is similar to H.R. 8233 but does not affect the definition of migrant worker which includes all temporary or seasonal agricultural labor. Instead it provides an exemption to any farm labor contractor, as defined in the law, who provides only day haul labor. It would not exempt any person who supplies, at the same time or at different times, both migrant workers away from their permanent residences and day haul workers.

THE FARM LABOR CONTRACTOR REGISTRATION ACT AND "DAY HAUL" LABOR

The Farm Labor Contractor Registration Act was enacted in 1963 to correct abuses of migrant agricultural labor in interstate commerce. It required labor contractors, or "crew leaders", to obtain certificates of registration from the Department of Labor, and to meet certain obligations to their employees, the migrant workers, such as carrying adequate insurance on vehicles used to transport workers, providing written statements as to the terms and nature of work to be done, keeping accurate payroll records, and informing workers of all sums due them and all sums withheld from wages for expenses.

Congressional hearings were held in 1973 and 1974 on the failure of the 1963 law to curb the abuses of migrant workers. The law was substantially amended in 1974 to correct some of the problems in it which hindered enforcement, to remove "loopholes" which allowed certain farm labor contractors to escape coverage, and to increase the penalty and investigatory powers of the Department of Labor.

A farm labor contractor is defined as anyone who recruits, hires or transports migrant workers for agricultural work, whether for himself or for another employer. The law applies to all farm labor contractors except those specifically exempted fom coverage. These exemptions include:

A non-profit charitable or educational organization;

A farmer who personally engages in labor contracting solely for his own operations;

A regular, full-time employee of a farmer who engages in labor contracting only for employer's operations and on no more than an incidental basis; and

An individual who engages in labor contracting within 25 miles of his permanent home and for no more than 13 weeks per year.

Migrant worker is defined as anyone who performs agricultural labor on a seasonal or other temporary basis. In effect, this includes all non full-time farm workers, not just those commonly referred to as migrants. Nothing in the definition refers to the commonly understood meaning of the term migrant which involves travel away from a permanent home, at the very least on an overnight basis, in search of seasonal work.

The 1974 amendments tightened up on the exemptions from coverage of certain types of farm labor contractors. This was done mainly by removing the word "interstate" in reference to "agricultural employment", thus covering all agricultural employment, whether conducted across state lines or entirely within a single state. The exemption in the 1963 law for contractors transporting fewer than 10 migrant workers at one time was also removed. A new exemption was added for any person engaging in farm labor contracting within a 25-mile intrastate radius of his permanent residence and for no more than 13 weeks per year; however, many more farm operations were covered by the first changes than were excluded by the new exemption.

The exemption for a farmer contracting solely for his own operation was tightened by adding the word "personally", which has been interpreted to mean "in person" and not just in overall charge of the operation. The exemption for a full-time employee of a farmer was tightened by adding the words "on no more than an incidental basis" which has been interpreted very narrowly by the Department of Labor to apply to a full-time employee only when he is replacing his employer who normally performs this work himself personally.

Additional requirements were imposed on farm labor contractors by the 1974 amendments. The insurance coverage required for vehicles used to transport workers was formerly no less than the amount required by state law, and at least $5,000 for bodily injury or death to any one person, and $20,000 for bodily injury or death to all persons involved in an accident. This amount was raised by the 1974 amendments to be the same as the insurance required by the Interstate Commerce Commission for transportation of passengers in interstate commerce, such as for an interstate bus company. ICC regulations require that a vehicle used to transport from one to twelve individuals carry insurance of $100,000 for bodily injury or death to any one person, and $300,000 to cover all passengers.

The effect of these changes has been to cover "day haul" operations, under which a person will carry people from their homes to work at a farm site for the day, returning them to their homes at night. In North Carolina, day haul workers are almost always local, permanent residents and not "migrant workers" as they are commonly known. Because of the labor market in the state, local workers for "day haul" operations often come from distances greater than 25 miles from the work site. Industrial workers in the same area often commute as much as 50–75 miles one way to higher paying manufacturing jobs.

Additional record-keeping and reporting requirements were also imposed on farm labor contractors by the 1974 amendments.

The contractors engaged in "day haul" operations in North Carolina are generally small operators whose primary employment is not in labor contracting. They may be the regular employees of a farmer or orchard owner who secure labor during the harvest season but who work in other aspects of the agricultural operation year-round. They may also be laborers themselves who transport friends and neighbors to work in return for a small fee. Others may be independent contractors who transport local workers during harvest times but who haul wood, scrap iron, and so forth, during the rest of the year.

The additional registration and record-keeping requirements, and in particular, the insurance requirement, have imposed a financial burden which the smaller contractors have not been able to meet. These contractors have simply gotten out of the "day haul" labor business and no longer can be counted on to supply labor. As a result, the number of day haul workers available in some parts of the state has dropped by four-fifths. To supply the needed labor, it has been necessary to recruit and transport actual migrant workers from other states at considerably higher costs.

The Mount Olive employment office of the North Carolina Employment Security Commission indicates that in 1974, before the effective date of the amendments to the Farm Labor Contractor Registration Act, approximately 102 vehicles came through on a daily basis to work on the vegetable harvest. In 1976, there were only 42 farm labor contractors operating on this basis.

Descriptive Summary of Legislation Introduced by Congressman Bill Hefner To Amend Farm Labor Contractor Registration Act

H.R. 8232 would amend the Farm Labor Contractor Registration Act by changing those sections in the definition of farm labor contractor which have the practical effect of including most "day haul" operators. It broadens the 25-mile radius to a 75-mile radius, thereby permitting more "day haul" operators to be exempted from coverage. It also eliminates the word "intrastate" so that the area in which "day haul" operations are exempted are drawn without regard to state boundaries. This would apply particularly in areas such as the Sandhills region of North Carolina which lies along the state boundary. It also eliminates entirely the restriction that such an exemption applies only to farm labor contracting operations conducted for less than thirteen weeks per year.

H.R. 8233 would change the definition of migrant worker in the law to fit the commonly understood meaning of the term and to exclude "day haul" workers. Migrant workers would be defined as an individual whose employment requires travel which prevents him from returning to his permanent residence on a daily basis.

H.R. 8234 would provide a specific new exemption for "day haul" labor operations, defined as supplying workers who return each day from work to their permanent residence.

Mr. Andrews. We will resume at this time by hearing from Congressman Andrew Ireland, Congressman from Florida. We welcome you here.

STATEMENT OF HON. ANDREW IRELAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Ireland. Thank you, Mr. Chairman. I have a statement that with your permission I would like to put in the record here and inasmuch as a number of points have already been touched on by some of the previous speakers, with your permission I will hunt and pick through it and try to hit some of the highlights that affect my district in particular and some of the things that perhaps should have additional emphasis, if that is agreeable.

Mr. ANDREWS. Very well, we will ask the full statement be included in the record.

Mr. IRELAND. Mr. Chairman, I represent the Eighth Congressional District of Florida, and citrus is our major industry. In fact, in due deference to my predecessor colleagues from California, my district produces more citrus than the whole State of California, and I say that not in a chauvinistic way but at least to call your attention to the fact we have an awful lot of those little orange things hanging on the trees down there.

In terms of size, the Florida citrus industry has over 17,000 growers, 200 packinghouses, and 50-some processors. At the height of the season, almost 30,000 workers are employed in citrus harvesting in Florida, mostly in my district.

Part of the citrus crop is harvested by individuals employed by farm labor contractors, and the rest is harvested by employees of the packers, growers, and processors. Therefore, I and the people whom I represent have a very real interest in legislation which affects farm labor contractors and the citrus industry. That is why I introduced H.R. 10631, and this is why I am here today.

At the outset, I would like to state that I agree wholeheartedly with the intent of F.L.C.R.A. That intent, as I understand it, was an effort to curb some very real abuses by certain unscrupulous farm labor contractors and crew leaders. The victims of these abuses were not only the farmworkers, but also farmers, packers, processors, and consumers. Congress rightly concluded that crew leaders and farm labor contractors should therefore be registered, regulated, and made subject to penalties for any violations.

However, in attempting to administer the act, the Department of Labor has, in my opinion, gone overboard, and has been imposing undue hardships and penalties upon many firms and individuals who are not in violation of the law, and who were never meant to be subject to its provisions.

Specifically, the Department has issued several surprising interpretations requiring legitimate farmers, packers, processors, and their bona fide employees to register as farm labor contractors, forcing them to assume all of the paperwork and bureaucratic burden inherent in that registration.

Prior to drafting my bill which we are considering here today, I spent some time reviewing the testimony taken on F.L.C.R.A. by this committee and others of both the House and Senate, from 1963 to the present. All of the abuses mentioned in these hundreds of pages of testimony relate directly to the actions of crew leaders and farm labor contractors. Conversely, there is no testimony of any abuses perpetrated by nonprofit co-ops, foremen, or other bona fide employees of farmers, processors, or packinghouses anywhere in hearing records.

My main objective in offering these amendments to F.L.C.R.A. is therefore not to water down the law, or to provide loopholes for potential violators, Rather, it is to reaffirm the original intent of Congress by placing the full burden of F.L.C.R.A. where it belongs; on those farm labor contractors who violate the law.

At this point in my testimony that will be in the record I touch on line by line the changes that my amendment would bring about. I would call particular attention to an item concerning the liability insurance on vehicles that was mentioned by both my predecessors at the hearing here today, an important consideration and a real concern for the State of Florida.

I would like to conclude by touching on one last item, No. 7, the last item in my report.

Lines 22 through 25 on page 3 and 1 through 11 on page 4 in my proposed bill amend three separate provisions of the act for the purpose of eliminating a burdensome paperwork requirement and providing a more cost effective solution for the problem to which the present language was directed. Section 6(e) of the act requires contractors to furnish certain records from the contractor.

Even in the best of circumstances, those records must be maintained in duplicate so that both the contractor and the person by whom he is engaged can have a copy. However, if, as frequently occurs in Florida citrus, the harvesting contractor's crew picks the fruit from 6 or 13 groves in a single week, then he must make 6 or 13 extra copies in order to provide 1 to each of the growers for whom services were rendered that week. Since few harvesting contractors, and no crew leaders, have Xerox machines of the type required to copy oversized payroll sheets readily available, this requirement places an inordinate burden on small contractors.

At present, only the largest harvesting contractors are able to make multiple copies of payrolls and other records in order to comply with this provision. It is, therefore, suggested that a more reasonable and cost effective means of assuring that the records will be available be provided in lieu of the wholly impractical means embodied in the current language. The alternative suggested is an amendment to section 5(a) to add a new subsection (6) to require an applicant, at the time he applies for a certificate or a renewal of his existing certificate, to "make available" to the Secretary the records required by section 6(e).

This would enable the Department at its option, either to (I) make a thorough examination of those records at that time if time permits, or (II) scan the records simply to make certain that the types of records required by 6(e) are being maintained, or (III) defer until a later date any check or audit of those records. The current language has been defended with the argument that it is easier for wage-hour investigators to locate the person who engages the contractors than the contractors themselves.

This is clearly incorrect. In the Florida industry, there are more than 17,000 growers, 200 packinghouses, and 50 processors. On the other hand, there probably are not more than 1,000 harvesting crews—and a substantially lesser number of farm labor contractors than this since many contractors employ a number of crews and an undeterminate number are exempt. Moreover, any records furnished a typical citrus grower by the contractor he engaged would be fragmentary and of little value, if any, in determining whether the contractor fully complied with the requirements of section 6(e).

If his fruit was harvested in 1 day, he would have records for only 1 day. It is conceivable that as many as 50 or 100 growers would have to be contacted to accumulate the records of a single crew of a normal citrus harvest season. Under the alternative approach suggested in the bill, the Department will have reasonable and cost effective means of assuring compliance.

With respect to the argument that crew leaders may be difficult to find, note the section 5(d) requires them to notify the Department of each change of address within 10 days. Failure to do so is grounds for revocation or suspension of the contractor's certificate of registration. Promptly after the contractor's certificate is suspended or revoked for his failure to provide the Department with a change of address, it becomes unlawful under section 4(c) for anyone to engage the contractor's services.

Accordingly, the operations of the contractor can promptly be brought to a halt under existing provisions of the act if the contractor either makes himself unavailable or declines to produce the records required by 6(e) promptly upon request of the Department.

Mr. Chairman, that concludes my comment on my statement, and I appreciate this opportunity.

Mr. ANDREWS. Very well, we appreciate your statement, and your full statement, as we have said, will be, without objection, made a part of the record. I can say that before Mr. Goodling got here there wasn't anyone here to object.

Mr. IRELAND. He likes oranges.

Mr. ANDREWS. Thank you, sir.

[The full statement of Mr. Ireland follows:]

STATEMENT OF HON. ANDY IRELAND, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, it is a pleasure to be here this morning, and I appreciate this opportunity to participate in the formulation of the important legislation pending before this subcommittee.

I represent the Eighth Congressional District of Florida, and citrus is our major industry. In fact, my district produces more citrus each year than the whole state of California.

In terms of size, the Florida citrus industry has over 17,000 growers, 200 packing houses and 50 processors.

At the height of the season, almost 30,000 workers are employed in citrus harvesting in Florida, mostly in my district.

Part of the citrus crop is harvested by individuals employed by farm labor contractors, and the rest is harvested by employees of the packers, growers and processors. Therefore, I and the people whom I represent, have a very real interest in legislation which affects farm labor contractors and the citrus industry. That is why I have introduced H.R. 10631, and this is why I am here today.

At the outset, I would like to state that I agree wholeheartedly with the intent of F.L.C.R.A. That intent, as I understand it, was an effort to curb some real abuses by certain unscrupulous farm labor contractors and crew leaders.

The victims of these abuses were not only the farm workers, but also farmers, packers, processors and consumers. Congress rightly concluded that crew leaders and farm labor contractors should therefore be registered, regulated, and made subject to penalties for any violations.

However, in attempting to administer the act, the Department of Labor has, in my opinion, gone overboard, and has been imposing undue hardships and penalties upon many firms and individuals who are not in violation of the law, and who were never meant to be subject to its provisions.

Specifically, the Department has issued several surprising interpretations requiring legitimate farmers, packers, processors and their bona fide employees to register as farm labor contractors, forcing them to assume all of the paperwork and bureaucratic burden inherent in that registration.

Prior to drafting my bill which we are considering here today, I spent some time reviewing the testimony taken on F.L.C.R.A. by this committee and others of both the House and Senate, from 1963 to the present. All of the abuses mentioned in these hundreds of pages of testimony relate directly to the actions of crew leaders and farm labor contractors. Conversely, there is no testimony of any abuses perpetrated by non-profit coops, foremen, or other bona fide employees of farmers, processors or packing houses anywhere in hearing records.

My main objective in offering these amendments to F.L.C.R.A. is therefore not to water down the law, or to provide loopholes for potential violators, rather, it is to reaffirm the original intent of Congress by placing the full burden of F.L.C.R.A. where it belongs; on those farm labor contractors who violate the law.

Mr. Chairman, at this point, I would like to go through line by line, each of the changes proposed in my legislation, and explain the rational behind each change.

1. Lines 5 through 8 on page 1 and lines 5 through 9 on page 3 are designed to provide an exemption for bona fide non-profit agricultural cooperatives of the type which operate in some areas of California and elsewhere for the purpose of providing a work force to cultivate and harvest crops for member farmers and member farmer cooperatives. The definition on lines 5 through 9 on page 3 is designed to describe bona fide cooperatives of this type while, at the same time, limiting its application in such a way as to avoid potential loopholes.

2. Lines 9 through 10 on page 1 and the top 3 lines on page 2 are designed to make clear Congress' intent that farmers, packers and processors, whether incorporated or not, be exempt, provided the work performed by the agricultural workers employed by them is confined to planting, cultivating, or harvesting crops to be grown, processed, etc. for their *own* operations. Because the word "Personally" was inadvertently left in the bill following a House amendment, the Department of Labor has taken the position that most corporations are not entitled to the exemption. By striking out that word, this issue is resolved. The Department has also taken the position that the exemption is available only if the employer of the agricultural workers holds title to the crop at the time of cultivation or harvesting is performed. For the reasons elaborated in last year's oversight hearings (pp. 86–87 first session hearings, p. 68 second session hearings) this simply does not conform to the economic realities of the situation. The illustrative phrase "including its planting***" is designed to make it clear that those activities are to be deemed a part of the entity's own operations *without regard to title.*

3. Lines 5 through 12 and 23 through 25 on page 2 and the top four lines on page 3 are designed to clarify and perfect Congress' intent to provide an exemption for bona fide employees of farmers, packers, processors and other exempt entities. The qualifying phrase "on no more than an incidental basis" which was added by the 1974 amendments, has been so narrowly construed by the Department and the courts as to nullify substantially the intent of Congress to provide an exemption for bona fide employees. It is, therefore, proposed that this qualifying phrase be deleted. Whether the "incidental basis" language is included or excluded, a typical crew leader who recruits a crew and then takes its members with him from operator to operator cannot meet the "solely for his employer" qualification which also appears in Section 3(b)(3). This is because his act of hiring workers cannot be considered to have been solely for any single one of the farmers or processors—rather it was partially for one and partially for the others. Accordingly, the "solely for his employer" qualification effectively prevents the typical crew leader from avoiding registration by having himself and his crew made employees of the operator by whom he is engaged. Accordingly, the principal loophole is effectively eliminated by the "solely for his employer" qualification. Concern was expressed, however, by the Department, by Burton Fretz, and others about

the situation involving a crew leader who works for a midwest farmer, travels 1,000 miles to Texas in the spring, and spends a substantial period of time in Texas recruiting workers on the basis of representations made about the work they will find in the midwest. If that crew leader is the employee of that farmer, it would logically follow that the operator will be both responsible and liable for any misrepresentations which may be made by the recruiter. Accordingly, this situation probably should not be considered to be a loophole. Nevertheless, my bill proposes substitute language (to replace "on no more than an incidental basis") on lines 9 through 12 or page 2 designed to make the exemption unavailable to such a *recruiting* employee thereby resolving, I hope, the concerns expressed on that issue.

4. Lines 13 through 16, page 2 are designed to make clear Congress' intent that the Act apply only to *seasonal* workers. The Department contends that the qualifying reference to "seasonal" in the last line of section (g) modifies only the IRS's definition of agriculture and does not modify the FLSA's definition of agriculture. We doubt that Congress so intended and propose this clarifying amendment to limit its application to situations involving seasonal workers.

5. Lines 20 through 22 on page 2 define the term "transported" to make it clear that an operator who forwards a money order, check, or ticket for the purpose of enabling the worker to travel by common carrier or private transportation of his own choosing should not thereby be deemed to have transported the workers.

6. Lines 10 through 21, page 3 are designed to eliminate a major cause of excessive premium costs for vehicle liability policies for farm labor contractors. Standard vehicle liability policies contain a policy exclusion designed to dovetail with workmen's compensation insurance policies consistent with the exclusive liability provisions of state workmen's compensation laws. As you know, state workmen's compensation laws provide that an employee who is entitled to workmen's compensation benefits may not also sue his employer in tort on account of that same accident. The Department of Labor takes the position that this policy exclusion be deleted from vehicle liability policies. The Department's position is correct with respect to seasonal workers for whom workmen's compensation protection is not provided, but incorrect where, as in many instances, workmen's compensation *is* provided. The deletion of this policy exclusion, even where workmen's compensation is provided, raises the risk that the courts might conceivably allow "double dipping" by agricultural workers. Because of that possibility—however remote—most liability carriers are unwilling to write vehicle liability insurance for farm labor contractors. (In Florida, only two insurance companies do so.) Those who do, often charge a rate three or four times higher than the normal one. The proposed amendment makes clear Congress' intent that the vehicle liability insurance required by the Act should dovetail with rather than be in addition to workmen's compensation benefits where the latter protection is provided *in addition to* vehicle liability insurance. You will note that the amendment applies *only if workmen's compensation is also provided.*

7. Lines 22 through 25 on page 3 and 1 through 11 on page 4 in my proposed bill amend three separate provisions of the Act for the purpose of eliminating a burdensome paper work requirement and providing a more cost effective solution for the problem to which the present language was directed. Section 6(e) of the Act requires contractors to furnish certain records to the farmer or processor by whom the contactor is engaged, and section (14) requires the farmer or processor to obtain those records from the contractor. Even in the best of circumstances, those records must be maintained in duplicate so that both the contractor and the person by whom he is engaged can each have a copy. However, if, as frequently occurs in Florida citrus, the harvesting contractor's crew picks the fruit from six or thirteen groves in a single week, then he must make six or thirteen *extra copies* in order to provide *one to each* of the growers for whom services were rendered that week. Since few harvesting contractors, and no crew leaders, have Xerox machines of the type required to copy over-sized payroll sheets readily available, this requirement places an inordinate burden on small contractors. At present, only the largest harvesting contractors are able to make multiple copies of payrolls and other records in order to comply with this provision. It is, therefore, suggested that a more

reasonable and cost effective means of assuring that the records will be available be provided in lieu of the wholly impractical means embodies in the current language. The alternative suggested is an amendment to Section 5(a) to add a new subsection (6) to require an applicant, at the time he applies for a certificate or a renewal of his existing certificate, to "make available" to the Secretary the records required by Section 6(e). This would enable the departmnt at its option, either to (I) make a thorough examination of those records at that time if time permits, or (II) *scan* the records simply to make certain that the types of records required by 6(e) are being maintained or (III) *defer* until a later date any check or audit of those records. The current language has been defended with the argument that it is easier for Wage-Hour investigators to locate the persons who engages the contractors than the contractors themselves. This is clearly incorrect. In the Florida industry, there are more than 17,000 growers, 200 packing houses and 50 processors. On the other hand, there probably are not more than 1,000 harvesting crews (and a substantially lesser number of farm labor contractors than this since many contractors employ a number of crews and an undeterminate number are exempt). Moreover, any records furnished a typical citrus grower by the contractor he engaged would be fragmentary and of little value, if any, in determining whether the contractor fully complied with the requirements of Section 6(e). If his fruit was harvested in one day, he would have records for only one day. It is conceivable that as many as 50 or 100 growers would have to be contacted to accumulate the records of a single crew of a normal citrus harvest season. Under the alternative approach suggested in the bill, the Department will have reasonable and cost effective means of assuring compliance.

With respect to the argument that crew leaders may be difficult to find, note the Section 5(d) requires them to notify the Department of each change of address within ten days. Failure to do so is grounds for revocation or suspension of the contractor's certificate of registration. Promptly after the contractor's certificate is suspended or revoked for his failure to provide the Department with a change of address, it becomes unlawful under Section 4(c) for anyone to engage the contractor's services. Accordingly, the operations of the contractor can promptly be brought to a halt under existing provisions of the Act if the contractor either makes himself unavailable or declines to produce the records required by 6(e) promptly upon request of the Department.

This concludes my statement, Mr. Chairman; once again, thank you for the opportunity to be here today.

Mr. ANDREWS. Mrs. Smith, I know you are due at another committee. Congresswoman Virginia Smith of Nebraska. She is on our list of witnesses, and we are most pleased to welcome her especially as a former member of this committee.

STATEMENT OF HON. VIRGINIA SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mrs. SMITH. Thank you very much, Mr. Chairman. I feel like coming home and I appreciate very much your kindness in allowing me to appear before your subcommittee. I, too, will be brief and highlight my statement, if I may submit it all for the record, please.

I believe the Congress must act as quickly as possible to clarify the language of the law, which apparently is being interpreted by the Department of Labor to the detriment of American agriculture.

It is not my intent to go into specifics in this testimony. The experts to follow will give you much better than I the specific changes needed and how the current interpretations are adversely affecting their businesses and operations.

I come before you to urge that changes be made in the law to prevent some narrowminded and ridiculous interpretations not foreseen by the Congress. Seed growers and distributors should be exempt from certain portions of the act that realistically do not apply to them or their employees. Enforcement of certain of the rules would create an unnecessary hardship on the industry and American agriculture.

Personally, I feel this whole problem is being created by overzealous bureaucrats at the Department of Labor who don't know anything better to do than harass our businessmen. It is this type of insensitivity to the real world that is especially upsetting to me.

In addition, some of the requirements of the Labor Department represent a continuation of the encroachment of the Federal Government into activities that are none of its business. These actions endanger yet another of the fragile freedoms that still exist for individuals in this country.

This is a dangerous trend that must be halted. I urge the subcommittee to heed the requests of those who will testify later and who are the ones directly affected by the new rules.

As you know, Mr. Chairman, my district is almost totally rural. It covers about three-fourths of the land area of the State of Nebraska. We all depend on agriculture to keep our economy going. But things are not going very well these days. We have seen thousands of farmers from across the country come to Washington during the past few weeks in search of help to raise farm prices.

The last thing they need is an action by the Federal Government which could lead to increased costs to the farmer. Yet, that is what could happen if the Farm Labor Contractor Registration Act is not changed. Someone has to pay for the additional costs of these new rules which seed growers and distributors must comply with. I am afraid in this case, that extra cost will ultimately be passed on to the farmer.

What is it we are talking about here? We are talking about a situation where—in my State anyway—several thousand high school students are hired for a portion of the summer to go out in the fields to detassel seed corn, thin out test plots or rouge sorghum. These people can in no way be considered "migrant workers" for whom the Congress approved the Farm Labor Contractor Registration Act to protect.

They live in the area where they are working. They go home to their permanent residence every night and in no way can the salary from this job be considered as their primary means of support. In many cases, it is more of a social event than a job. It also provides a good opportunity for a coach, high school teacher, or college student to pick up some extra money and for the students to keep in touch during part of the summer.

The original law and the 1974 amendments to the act were passed to curb some very real abuses to people who had been exploited in past years. I do not believe there was any intent by the Congress to hamstring a segment of the agricultural business community with redtape and more paperwork and require high school students to be fingerprinted and carry Federal registration cards. Where is the commonsense in this?

It has been brought to my attention that the House report accompanying the 1974 amendments to the act contains a statement that clearly shows the intent of the Congress in this matter. Although it specifically mentions a certain area of the country, there is no reason to believe it cannot apply to other sections where there are similar circumstances. As contained on page 7 of the report, this committee wrote:

> While it is the feeling of the Committee that the definitions and exclusions contained in Section 3 of the Act as it would be amended by this bill exclude the traditional relationship which exists in the hand-harvesting of certain crops in the Pacific Northwest whereby a teacher or other incidental employee of a grower may recruit, solicit, hire, furnish or transport students or other permanent residents of the area and whereby such recruitment, solicitation, hiring, furnishing or transporting is done in his capacity as an employee and results in the establishment of an employer-employee relationship between the grower and the students or other permanent residents mentioned above, some apprehension was indicated by certain members. It should be made clear that the Committee does not intend, in any manner, to disturb the traditional historical relationship described above which the Committee does not feel is a farm labor contractor relationship as defined by this Act.

To give this interpretation the force of law, however, I believe the Congress should amend the act to specifically exempt seed producers and distributors, those who furnish workers or grow crops for them and their employees—under certain circumstances. The details of this arrangement will be spelled out in later testimony.

Mr. Chairman, we must be constantly watchful of activities that threaten the sovereignty of our citizens. I believe that unless this law is changed to stop the actions proposed by the Department of Labor, we face a serious challenge to our freedom.

At this point, I would like to ask unanimous consent to have printed in the hearing record a resolution by the board of the American Seed Trade Association, which outlines its views on changing the Farm Labor Contractor Registration Act, and several statements by constituents of mine who are directly affected by the unfairness of the current interpretation of the law.

Thank you for giving me this opportunity.

Mr. ANDREWS. Thank you very much, Mrs. Smith, and without objection we will include in the record the several statements and letters to which you referred .

Mrs. SMITH. Thank you very much.

[The statement of Mrs. Smith and other materials follow:]

STATEMENT OF HON. VIRGINIA SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. Chairman, I want to thank you for your kindness in allowing me to appear before your subcommittee in support of needed changes to the Farm Labor Contractor Registration Act.

I believe the Congress must act as quickly as possible to clarify the language of the law, which apparently is being interpreted by the Department of Labor to the detriment of American agriculture.

It is not my intent to go into specifics in this testimony. The experts to follow will give you much better than I the specific changes needed and how the current interpretations are adversely affecting their businesses and operations.

I come before you to urge that changes be made in the law to prevent some narrow-minded and ridiculous interpretations not foreseen by the Congress. Seed growers and distributors should be exempt from certain portions of the act that realistically do not apply to them or their employees. Enforcement of certain of the rules would create an unnecessary hardship on the industry and American agriculture.

Personally, I feel this whole problem is being created by overzealous bureaucrats at the Department of Labor who don't have anything better to do than harass our businessmen. It is this type of insensitivity to the real world that is especially upsetting to me.

In addition, some of the requirements of the Labor Department represent a continuation of the encroachment of the federal government into activities that are none of its business. These actions endanger yet another of the fragile freedoms that still exist for individuals in this country.

This is a dangerous trend that must be halted. I urge the subcommittee to heed the requests of those who will testify later and who are the ones directly affected by the new rules.

As you know, Mr. Chairman, my District is almost totally rural. It covers about three-fourths of the land area of the State of Nebraska. We all depend on agriculture to keep our economy going. But things are not going very well these days. We have seen thousands of farmers from across the country come to Washington during the past few weeks in search of help to raise farm prices. The last thing they need is an action by the federal government which could lead to increased costs to the farmer. Yet, that is what could happen if the Farm Labor Contractor Registration Act is not changed. Someone has to pay for the additional costs of these new rules which seed growers and distributors must comply with. I am afraid in this case, that extra cost will ultimately be passed on to the farmer.

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They live in the area where they are working. They go home to their permanent residence every night and in no way can the salary from this job be considered as their primary means of support. In many cases, it is more of a social event than a job. It also provides a good opportunity for a coach, high school teacher or college student to pick up some extra money and for the students to keep in touch during part of the summer.

The original law and the 1974 amendments to the Act were passed to curb some very real abuses to people who had been exploited in past years. I do not believe there was an intent by the Congress to hamstring a segment of the agricultural business community with red tape and more paperwork and require high school students to be fingerprinted and carry federal registration cards. Where is the common sense in this?

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"While it is the feeling of the Committee that the definitions and exclusions contained in Section 3 of the Act as it would be amended by this bill exclude the traditional relationship which exists in the hand-harvesting of certain crops in the Pacific Northwest whereby a teacher or other incidental employee of a grower may recruit, solicit, hire, furnish or transport students or other permanent residents of the area and whereby such recruitment, solicitation, hiring, furnishing or transporting is done in his capacity as an employee and results in the establishment of an employer-employee relationship between the grower and the students or other permanent residents mentioned above, some apprehension was indicated by certain Members. It should be made clear that the Committee does not intend, in any manner, to disturb the traditional historical relationship described above which the Committee does not feel is a farm labor contractor relationship as defined by this Act."

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Mr. Chairman, we must be constantly watchful of activities that threaten the sovereignty of our citizens. I believe that unless this law is changed to stop the actions proposed by the Department of Labor, we face a serious challenge to our freedom.

At this point, I would like to ask unanimous consent to have printed in the hearing record a resolution by the Board of the American Seed Trade Association, which outlines its views on changing the Farm Labor Contractor Registration Act, and several statements by constituents of mine who are directly affected by the unfairness of the current interpretation of the law.

Thank you for giving me this opportunity.

American Seed Trade Association

BOARD RESOLUTION IN SUPPORT OF AMENDMENTS TO FARM LABOR CONTRACTOR REGISTRATION ACT

Resolved, That the Board of Directors of the American Seed Trade Association strongly opposes the over-reaching extension of the Farm Labor Contractor Registration Act to the hiring of non-migrant farm labor by seed growers;

Further resolved, That the Association believes that this extension goes beyond any reasonable interpretation of the law, provides no public benefit, places an unnecessary compliance burden on the seed industry, and represents a waste of government resources;

Further resolved, That the Association supports the enactment of H.R. 10053 (the McFall Bill), H.R. 8894 (the Sarasin Bill), or any other bill which would achieve the following basic objectives:

1. The exclusion from classification as a "farm labor contractor" (or as an employee of such a contractor) or any seedsman, employer, contract grower or independent labor crew organizer, with respect to any seed production or research activity, in which all of the workers who are substantially and regularly engaged in agricultural employment can return to their permanent homes each night;
2. The deletion of the word "personally" in Section 3(b)(2) of the Act, which exempts farmers hiring workers for their own operations, so as to make it clear that the exemption extends to any employer hiring labor for his own farming operations, whether or not he is incorporated and regardless of whether there is more than one owner;
3. Deletion of the words "on no more than an incidental basis" from Section 3(b)(3) of the Act, which exempts farm employees working solely for one employer, so as to make it clear that farm managers and personnel managers are not "farm labor contractors;" and also the provision of definitions which make it clear that this exemption extends to any full-time seasonal or year-round employee whose activities are confined to one employer;
4. Revision of the definition of "migrant worker" in Section 3(g) to make it clear that the Act deals only with seasonal workers, and also (as a needed addition to H.R. 10053) to make it clear that a worker is a migrant only if he is unable to return to his permanent home at night, or is transported for a substantial distance from his permanent home to work each day in a vehicle controlled by a farm labor contractor; and
5. The provision of a definition of "transport" so that, with respect to the transportation of migrant workers, the Act will apply only to persons who have some degree of control over the transportation.

Further resolved, That the officers of the Association are directed to express the views of the Association to the appropriate members and committees of the Congress, and to support or oppose such specific amendments to the Act as, in their judgment, may be in the best interest of the members of this Association and their employees, within the framework of this resolution.

Adopted February 11, 1978.

BASIS FOR FIGURES ON NUMBERS OF SEED INDUSTRY REGISTRATIONS REQUIRED UNDER FCLRA

Company	Persons to be registered	Vehicles to be registered	Number of temporary employees
1. The following firms represent approximately 50 pct of the market share:			
DeKalb	2, 100	1, 700	36, 000
Pioneer	3, 700	1, 300	65, 000
Garst & Thomas	2, 100	600	20, 000
	7, 900	3, 600	121, 000
2. The following firms are believed to represent approximately 30 pct o the market share:			
Northrup King	280	180	4, 900
ACCO	100	70	1, 400
Jacques	350	125	6, 500
Funk	2, 000	1, 000	30, 000
Golden Harvest	1, 850	1, 500	18, 450
Cargill-PAG	325	275	5, 200
Pfizer Genetics	600	425	16, 000
Asgrow	105	80	2, 400
NC+	460	60	3, 000
Prairie Valley	125	32	2, 050
	6, 195	3, 747	89, 900
3. The following firms are believed to be representative of approximately 150 companies sharing an estimated 20 pct market share:			
Lynks	20	15	500
Moews	45	30	1, 000
Bear	35	15	500
Lauber	75	15	250
Pfister	35	25	800
Southern States	25	20	500
F. J. Funk & Sons	6	5	425
	251	125	3, 975
Projected for all companies in this group	5, 400	2, 700	72, 000
4. Summary (market share):			
50 pct (firm)	7, 900	3, 600	121, 000
30 pct (firm)	6, 195	3, 747	89, 900
20 pct (projected)	5, 400	2, 700	72, 000
Total	19, 495	10, 047	282, 900

It is important to realize that the above totals are for production of *Hybrid Seed Corn only.* No attempt has been made to tabulate the additional registrations which will be required for production of other kinds of seed. Significant numbers of students and other local temporary labor are used in vegetable, soybean, cotton, flower, etc. seeds.

Congress of the United States,
House of Representatives,
Washington, D.C., February 28, 1978.

Hon. Ray Marshall,
Secretary, Department of Labor,
Washington, D.C.

Dear Mr. Secretary: This is to bring to your attention a matter of extreme urgency to an important segment of the agricultural business community in this country. The Farm Labor Contractor Registration Act is being interpreted by your Department to include seed growers and distributors and their employees under provisions of that law. Enforcement of those rules during 1978 would create an unnecessary and unwarranted hardship on the industry and American agriculture, and would further extend the federal presence into an area where several hundred thousand temporary employees are hired for a portion of the summer to go into the fields to detassel seed corn, thin out test plots, or rogue sorghum. These people can in no way be considered migrant workers for whom the Congress approved the Farm Labor Contractor Registration Act to protect.

The workers—usually high school or college students—live in the area where they are working. They go home to their permanent residences every night, and in no way can the salary from this job be considered to be their primary means of support.

The original law and the 1974 amendments to the Act were passed to curb some very real abuses to people who had been exploited in past years. I do not believe there was any intent by the Congress to hamstring a segment of the agricultural business community with red tape and more paperwork and require high school students to be fingerprinted and carry federal registration cards.

According to the seed trade industry, as many as 20,000 persons and more than 10,000 vehicles may be required to be registered this year for production of hybrid seed corn alone. This does not count the numbers who work in the vegetable, soybean, cotton, or flower seed trade industry.

It is my opinion, and the opinion of those who testified last week before the Economic Opportunity Subcommittee of the House Committee on Education and Labor, that there needs to be an exemption—either legislatively or administratively—from the provisions of the Farm Labor Contractor Registration Act for the seed industry.

The purpose of this letter is to ask that for the coming growing season you suspend enforcement of the law as you interpret it to apply to the seed industry. Inasmuch as legislation is pending in the Congress to accomplish this exemption legislatively, it would seem to be a bureaucratic exercise to require the seed industry to go through the registration procedure for only one year.

Immediate action is needed since many seed companies are beginning to prepare to hire temporary workers for the upcoming season. I think it would be completely unfair and unnecessary to require the seed industry to go through the federal registration process when the Congress is in the process of clarifying the law.

Your prompt reply to my request would be greatly appreciated. We have thousands and thousands of workers who will be affected by this matter and are waiting to see if their government has the capability to exercise some restraint in its authority, and some common sense in its actions.

With best wishes, I am

Sincerely,

VIRGINIA SMITH,
Member of Congress.

Mr. GOODLING. I am noticing the faces of some people in the audience. I think your message got across.

Mrs. SMITH. I am gratified to have you say that.

Mr. ANDREWS. Thank you.

Mrs. SMITH. Thank you.

Mr. ANDREWS. Congressman Thone of Nebraska.

STATEMENT OF HON. CHARLES THONE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. THONE. Chairman Andrews, and Mr. Goodling, nice to be with this committee, and I will in lieu of any brilliant or profoundary here confine myself to a few brief remarks. I think I would be better served by this committee because my testimony basically would be repititious of the testimony you have already received from Mrs. Smith.

Let me briefly say this. That for many years, over 40, to my knowledge, the high school and school students have been working in detasseling operations in hybrid seed production fields in many Midwestern States, including my own of Nebraska, and most of these students are hired in June for working in the fields for about 3 or 4 weeks. They are usually supervised by older students that have had earlier experience in the detasseling work.

I might tell the committee that my daughters did this, they are now both in college, but 3 or 4 or 5 years ago they went out with their high school gangs and really enjoyed this work and the money that went with it and it was, as Mrs. Smith said, somewhat of a social event and has worked out very well and the extension and overreaching that the Department is now placing on this thing is just terribly ridiculous and pretty much goes to the image that Washington has got about overregulating, overtaxing, and overgoverning that we all here as we travel around our congressional districts.

Mr. Chairman, I would like to have you include for the record my full statement, which includes a resolution passed by the Nebraska Crop Improvement Association condemning this overreaching by the Department and also I would conclude by stating this.

I am aware that there are bills introduced by Congressmen McFall and Sarasin and in your deliberations on these bills I would like to have you give consideration to exempting seed production workers from the Farm Labor Contractor Registration Act of 1963, as amended. Attached to my statement is a proposed amendment to accomplish this result. And your consideration of these views and affirmative action on this exemption would certainly meet with the approval of this member and many, many of the constituents that I represent.

I imagine there is as much hybrid corn raised in my congressional district as there is anywhere in the United States.

Thank you. I will answer any questions that you or Mr. Goodling would have.

[The statement of Mr. Thone follows:]

STATEMENT OF HON. CHARLES THONE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. Chairman and Members of the Subcommittee, this opportunity to appear and discuss a situation which is deeply affecting the Nebraska seed industry is appreciated.

For many years, over 40 to my knowledge, high school and college students have been working in detasseling operations in hybrid seed production fields in many midwestern states including Nebraska. Most of these students are hired in June after school is out and work in the fields for three or four weeks. They are supervised usually by older students that have had earlier experience in the detasseling work. There is generally one supervisor or strawboss for every 10 to 15 detasselers, one crew foreman for every busload of workers plus certain other supervisory personnel. The workers are recruited locally and are paid the federal minimum wage or more, depending on their responsibilities. There is a great deal of competition for these jobs because it allows these students to earn spending money in a short period of time, thus not taking up all of their vacation time. It should be stressed that these workers return to their homes each night.

With this background, let me tell you what has developed; the Department of Labor bureaucrats, in their great wisdom, have decreed that the Farm Labor Contractor Registration Act of 1963, as amended, applies to these operations. It is incredible, but these bureaucrats have stretched the term "migrant labor" to include the group of workers I have just described. The legislation, as originally passed, I find no fault with, as it deals with the problems of "farm labor contractors" and "migrant workers", but it is this interpretation now being passed along as the gospel as to what Congress intended that needs to be addressed.

It was not until 1976, when seed companies in Indiana, Illinois and Wisconsin were cited for violations, that it first came to light that the Department of Labor was interpreting the law in this fashion. This may have come about as a result of interpreting the 1974 amendments to the Act. In House Report 93–1493, which accompanied H.R. 17474, in the Section by Section Explanation, it is clearly spelled out, in my opinion, that this type of operation is excluded.

Nevertheless, the Department of Labor has a different viewpoint and has applied pressure, and in early January the Nebraska Department of Labor called a meeting of corn and seed producing companies and advised the companies that they must comply. You can imagine the turmoil this ruling has caused. Seed companies are upset, field office personnel in the Department of Labor foresee all sorts of problems and personnel in the Nebraska Department of Labor have expressed alarm at this turn of events.

The consequences of this ruling will require the registration and finger printing of all employees involved in the hiring, firing, transporting and supervising of detasseling employees. Because of the time involved, the turnover of the employees, the mammoth volume of employees and the short duration of the employment, this is an all but impossible task for the seed companies to stay in compliance with such regulations as issued. But even more to the point, it is but another example of determinations being made by Federal agencies that the Federal Government is all knowing and can do it better. I don't have to recite for the Members the reams of regulations issued by OSHA, EPA, FDA, and other agencies. The employees involved in these operations are our own youth, our families, and why in the world should we add another layer of federal regulations on top of local and state regulations that have very adequately supervised this kind of operation for many, many years. To my knowledge, there have been no complaints registered by the workers, their families or by local officials. It is beyond my comprehension as to why we should saddle these extra costs and inconveniences on an industry that has experienced no problems and where, consequently, there would be no public benefit involved. In Nebraska, some 15 to 20,000 youth are engaged in this work every year and by such stupid regulations, we might well force the companies to turn to mechanical methods of detasseling and then what would this do to our employment problems?

The Nebraska Crop Improvement Association, at its annual meeting on January 17, 1978 in Kearney, Nebraska, adopted the following resolution which is very clear in expressing the Association's views of this situation.

Mr. Chairman, I am aware of the bills introduced by Congressmen McFall and Sarasin and in your deliberations on these bills I would like you to give consideration to exempting seed production workers from the Farm Labor Contractor Registration Act of 1963, as amended. Attached to this statement is a proposed amendment to accomplish this result. Your consideration of these views and affirmative action on this exemption would certainly meet with the approval of this Member and the constituents he represents. Thank you for giving me this time to present these comments.

RESOLUTION PASSED BY THE NEBRASKA CROP IMPROVEMENT ASSOCIATION ANNUAL MEETING, JANUARY 17, 1978—KEARNEY, NEBR.

Directed to: Honorable J. J. Exon, Governor of the State of Nebraska; Director, Nebraska State Department of Agriculture; all Nebraska Senators and Representatives in the U.S. Congress.

In regard to: Farm Labor Registration Act of 1963, as amended.

Whereas the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, has informed the seed producers of Nebraska that when these seed producers hire students, supervisors and/or other workers for summer employment in Nebraska seed fields of hybrid corn, sorghum and bean production, these students and/or other workers are classed as migrant labor; and those who recruit, solicit, hire, furnish or transport these students or other workers are governed by the Farm Labor Contractor Registration Act of 1963, as Amended; and

Whereas we believe this to be an unrealistic law; and

Whereas students, supervisors and/or other workers are not migrant laborers and are not regularly required to be away from their permanent homes other than during regular working hours; and

Whereas Federal registration, fingerprinting, related forms and regulations will cause considerable increase in operating costs to seed producers, thus increasing the cost of seed to the farmer; and

Whereas the use of mechanical machines in lieu of students for hybrid seed production will further substantially increase production costs, which will in turn increase seed costs to the farmer; and

Whereas the present Farm Labor Contractor Registration Act of 1963, as Amended, as it now stands, could severely reduce summertime employment of an estimated 15,000 Nebraska youth engaged in this activity; and

Whereas exemptions have been made, including custom combine, hay harvesting or sheep shearing operations; any custom poultry harvesting, breeding, debeaking, sexing or health service operations, providing the employees of the operation are not regularly required to be away from their domiciles other than during their normal working hours; therefore

Be it resolved, That we respectfully request that seed production workers also be classed as exempt from the Farm Labor Contractor Registration Act of 1963, as Amended.

FARM LABOR CONTRACTOR REGISTRATION ACT ADDITIONAL PROPOSED AMENDMENT TO PROVIDE SPECIFIC SEED INDUSTRY EXEMPTION

A new paragraph (10) is hereby added following paragraph (9) of Section 3(b) of the Act, reading as follows:

(The term "farm labor contractor" shall not include:)

(10) any person, with respect to such persons's activities in the business of producing, processing or distributing seeds for planting or distribution for planting (or in related or incidental activities, including research), or any person who furnishes workers to or grows crops under contract for such person, or any employee of either such person, if all of the seasonal employees used in the business, who are customarily engaged in agricultural employment for more than thirteen weeks per year, can regularly return to their permanent places of domicile each day after working hours.

Mr. GOODLING. No questions.

Mr. ANDREWS. We don't have any questions. Thank you for your testimony.

Without objection the full statement will be made a part of the record.

Mr. THONE. Thank you for your courtesy.

Mr. ANDREWS. Congressman David Stockman.

STATEMENT OF HON. DAVID STOCKMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. STOCKMAN. Thank you very much. I have a prepared statement I would like to submit for the record. I think it pretty well covers some of the grounds that you have heard already this morning, so, what I will do very briefly here is just reiterate.

I want to commend you for holding these hearings because I think we have a case here that occurs so often when we pass much needed legislation, and I agree that this legislation was much needed in 1963. I happen to come from an area that is intensively involved in fruit and vegetable and truck farming and there were problems in terms of crew leaders and the way that migrant workers were treated.

I grew up in this kind of situation, so I am aware of it. But when we pass legislation like this I am afraid often there are spillover effects, unintended consequences, that adversely affect operations we never intended.

I want to call to the attention of the committed two of these instances that have occurred in my district. That is why I am here today, to urge you make some minor adjustments, some kind of retargeting of the legislation so it will get the job we want but not interfere in other areas.

Of course, one is the seed corn detasseling operation. I have that very prevalent in my district as well, something like a million dollar payroll every year for kids in the age group of 13 to 17. These jobs simply won't be available to kids if this law is enforced as it is intended by the Labor Department today.

I don't consider them migrant laborers, I don't consider those who drive the buses to pick them up in some of the larger towns around this seed corn area to be crew leaders. Most of them are school bus drivers who are off during the summer, physical education teachers or others, and by forcing them to register as farm labor contractors with the vulnerability to fines, with all the requirements and the proceeding time, and this is a serious problem because this only lasts 4 to 6 weeks, sometimes they will have a bus driver quit right during the middle of the detasseling season, then they have to get somebody quick, and there is no way even with the best efforts the Labor Department can process an application to get the guy in the bus and on the road picking these kids up and to the job.

I would like to reenforce and concur with what you have probably heard already this morning on this topic. I have one other area that may be unique and I want to stress that a little more.

We have a situation in the fruit belt area where I live, along Lake Michigan, in southwestern Michigan, where many farmers have registered or licensed farm labor camps. The problem in the fruit and vegetable belt is that most of the harvest season for any discreet or particular crop lasts from 2 to 3 weeks, then they move on to something else. You start with asparagus, then you go to strawberries, than raspberries and blueberries and to the apples and peaches, and so forth, over the course of a 5- or 6-month period.

Most farmers don't grow every one of those crops, and as a result there is a certain hiatus period if they have a farm labor camp where for 2 or 3 weeks between crops there is nothing for these migrant workers to do.

Now, normally what happens is that during this 2 or 3 week hiatus the farm workers go to another farm, neighboring farm, 10 or 20 or 30 miles down the road, where there is a crop in season and they work there. The problem that we had last summer was the Department of Labor indicated its intention to enforce this act against these farmers, on the grounds that somehow by sharing their crews they had been transformed into the status of a crew leader.

The particularly strained interpretation of the act that really I must say aroused my dander was the Department's interpretation that by allowing their workers, on their own, to go out and find employment during this down period, 2 weeks, 3 weeks, and by knowing that those workers would come back when blueberries start 2 weeks later, the farmer was receiving a valuable consideration because his labor force would be coming back. This constituted a fee within the meaning of the act, and, therefore, he would be required to register under the act.

Now, Mr. Chairman, I think that is probably one of the most strained interpretations of the plain meaning of statutory language that I have ever heard, and so I have introduced legislation that would make it clear that when there is casual exchange of labor or within a 25-mile radius area and there is no fee involved, other than reimbursement of expenses, that those farmers involved in this—and they have been doing this for decades—would not be considered farm labor contractors and would not come under the act in terms of registration, vulnerability to fines, and so forth.

I would urge the committee to make the minor change in section 2 of the bill so that the Department is not allowed to enforce the act in this way and really cause some pretty serious disruptions in the growing season in my area. If they are allowed to do this the adverse affect is going to be primarily on the migrant workers because they are going to be locked into a camp for 2 or 3 weeks. unable to go out and seek employment elsewhere during these down cycles that we have.

So that completes my statement. I would urge that the committee act both in the seed corn area and on this particular problem we have in the fruit and vegetable areas to make this act more workable and to accomplish the things that were originally intended.

Mr. ANDREWS. Well, thank you, and without objection the full text of your statement will be included in the record. I assure you the matters you have brought to our attention will be most seriously considered. Thank you very kindly.

[The statement of Mr. Stockman follows:]

STATEMENT OF HON. DAVE STOCKMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, the agricultural producers of my state face two very serious problems as a result of the interpretation the Department of Labor has given certain provisions of the Farm Labor Contractor Registration Act. I know that you and the other distinguished Members who serve on this Subcommittee have taken great care to construct a legislative framework for the regulation of farm labor contracting that protects the interests of the migrant worker without unnecessarily burdening agricultural producers. I believe very strongly that the careful balance envisioned by the Subcommittee is threatened by recent Labor Department enforcement activities in Michigan, however. That is why I particularly welcome the opportunity to appear before you this morning to discuss the situation in my state.

But I would first like to thank you for the promptness with which the Subcommittee has moved to address the problems that have arisen in the implementation of the Farm Labor Contractor Registration Act. I very much appreciate your willingness to give early consideration to the legislation that I and other Members have introduced in this area. These hearings are the clearest demonstration of the thoughtful and conscientious approach this Subcommittee has taken to devising a solution to these serious problems.

PROBLEM NO. 1: EXTENSION OF THE REGISTRATION REQUIREMENTS OF FLCRA TO AGRICULTURAL PRODUCERS WHO ENGAGE IN CASUAL EXCHANGES OF LABOR

The first problem that I would like to bring to the attention of the Subcommittee is the contention of the Department of Labor that farmers who engage in casual exchanges of migrant labor should be required to register as farm labor contractors. In a sense, this problem arose because of the very nature of farming. Crops do not ripen on an individual farm continually, nor do they adhere to a firm schedule. Thus farmers who bring in migrant workers to harvest crops do not need the services of the workers continuously throughout the season. Rather than have the workers sitting idle and unpaid or moving from farm to farm every week or two, the farmers make casual exchanges with their neighbors to share the services of a group of workers. They do not pay one another fees as part of these arrangements, which are beneficial to the workers, who are able to earn more during the season, as well as to the farmers, who are assured of having workers available when they need them.

On these facts, the Labor Department has found that the farmer whose operation serves as the base from which the workers go out is a "farm labor contractor." The key to breaching the explicit exemption from registration for farmers provided by the Act is the contention that the *expectation* the workers will return constitutes "valuable consideration." Thus these farmers are receiving a "fee" for arranging employment for the workers, causing the farmers to come under the registration requirement.

On the face of it, Mr. Chairman, I find this interpretation of the clear terms of FLCRA hard to sustain. I think it flies in the face of common sense and defeats the clear intent of the statute.

I wrote to the Secretary of Labor last summer to express my concern over the Department's contention that there is a "fee" involved in these casual exchanges. I hoped that the Department would reconsider its policy in this area. The response of the Department gave me no hope that the problem could be solved without legislation, however. I was told that "it is not the intent of the U.S. Department of Labor to utilize its limited Farm Labor Contractor Registration Act resources in investigations of small individual farmers who share on a local and casual basis a common workforce." But I was not told that the Department would not begin to enforce the Act against these same farmers if it later finds itself with additional resources. The problem has merely been deferred, in my judgment. It has not been resolved.

Mr. Chairman, the Subcommittee has before it a bill that I introduced earlier this year to remove this threat of later enforcement of FLCRA against farmers engaging in casual exchanges of migrant labor. This bill is quite simple and straightforward. It provides that any agricultural producer who would otherwise qualify under the Act as a farm labor contractor is exempt if he meets two requirements: 1) that he is arranging for labor services that will be performed on another farm located within twenty-five miles of his place of residence; and 2) that he receives as a fee no monetary consideration other than reimbursement of actual expenses. These two restrictions are narrowly-drawn and will not create a loophole in the Act that threatens the protection afforded migrant workers by the registration requirements. Indeed, the migrant workers wil be greatly benefitted by the encouragement of labor-sharing arrangements that this bill would provide. The workers will be far less likely to face the severe hardship of unemployment during the very short season in which their services are in demand.

PROBLEM NO. 2: ENFORCEMENT OF FLCRA AGAINST EMPLOYEES OF SEED CORN OPERATIONS

The second problem that I would like to bring to the attention of the Subcommittee has developed out of another effort by the Department of Labor to extend FLCRA to a situation that I believe to be outside the scope of the Act: the provision of transportation to teenagers employed on a daily basis to detassel corn. In my district, production of seed corn makes a very significant contribution to agricultural income. It also provides short-term employment for nearly 5,000 young people each summer—teenagers who would otherwise have little or no opportunity to work. The teenagers go out to the cornfields in order to cut the tassels off of female corn plants. This is an essential part of seed corn production as it preserves the genetic composition of the hybrid seed. The people who drive the youths to the work sites are generally permanent school bus drivers, teachers, and college students looking for summer work. These people drive buses that are leased by the seed corn operator and pick up the field workers each day from their homes and return them in the evening.

Because the bus drivers are transporting "agricultural workers" for a fee, the Department of Labor takes the position that they are "farm labor contractors" as that term is defined in FLCRA. So our school bus drivers are being asked to register, to fill out forms, and to face the possibility of large fines for failing to comply with FLCRA.

The effect of imposing this registration requirement will be the eventual destruction of the largest single source of youth employment in my district. For as in any business, the management of the seed corn operators is extremely sensitive to factors that affect the cost and availability of a production input. Thus as government regulation forces up the cost of hiring drivers and disrupts the supply because of the delays in processing registration papers, thereby forcing up the cost of the present method of detasseling corn, the operators will find substitutes for the teenaged workers. Even now, the development of automated equipment has been accelerated—government regulation has made such equipment potentially cost-effective. I would add that this problem is not confined to my district. The principal seed corn operator in my area alone employs over 30,000 people each year across the nation.

Mr. Chairman, today I am introducing legislation that would provide an exemption for this kind of activity so that we do not force the seed corn operators to shift to mechanized production before it would otherwise be cost-justified. My bill would provide this relief by expanding the present intrastate exemption under the Act in Section 3(b)(4) to include a seventy-five mile radius from the person's place of residence, measured without regard to state boundaries. The potential for abuse inherent in such a small revision of the present extension is in my view almost nil. The record of hearings that originally led to the passage of FLCRA clearly indicates that the abuses of migrant workers that occurred involved transportation over a distance much greater than seventy-five miles.

In closing, Mr. Chairman, I wish to stress that my intent in offering these two bills is to put the Labor Department back on the right track. I think that it is clear that Congress never intended to see FLCRA enforced against farmers who make casual labor exchanges or against school bus drivers with a summer job driving teenagers out to detassel corn. These two groups of people cannot be the "irresponsible contractors" referred to in Section 2(a) of the purposes of FLCRA. It would be a most unfortunate irony if the Farm Labor Contractor Registration Act becomes a vehicle for producing the unemployment of migrant workers by interfering with casual labor exchanges. It would be no less unfortunate if tens of thousands of teenagers lose a reliable source of summer employment by enforcement of FLCRA against their bus drivers.

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. Chairman, I would like to thank you and the other members of this subcommittee for the opportunity to present testimony. I would like to add my concerns to the others who have testified about how certain provisions of the Farm Labor Contractor Registration Act are being administered. Specifically, I am concerned about the efforts of the Labor Department to extend the Farm Labor Contractor Registration Act to those who transport teenagers on a daily basis to detassel corn.

The third district in Iowa is a major producer of seed corn. Consequently, this matter is of great importance to me and the people in my district.

As you probably know, the detasseling of corn is an essential part of seed corn production as it preserves the genetic composition of the hybrid seed. The detasseling of corn takes place for only a short period of time during the year. In most instances, teenagers are used to detassel the corn. Many times teenagers are gotten together by school teachers, college students, or others who are interested in this type of part-time work at this particular time of the year. Sometimes transportation is provided for the teenagers by those who recruited them. When these individuals do supply the transportation, they usually drive buses that are leased by the seed corn operator and pick up the detasslers each day from their homes and return them home in the evening.

Presently, the Department of Labor considers individuals who are coordinating these teenagers as "farm labor contractors" as that term is defined in

FLCRA. To be in compliance, this causes these individuals to have to register fill out complicated forms, and face possible large fines if they do not comply.

The impact of imposing these requirements will, I am afraid, result in the loss of an important source of youth employment in my district. It appears that seed corn operators will most likely turn to mechanical methods of detasseling corn should the registration procedures be required.

In my opinion, this is once again the federal government, or more appropriately those who administer the laws, overstepping the bounds of the original intent of the law. I will not argue that there was not a need for regulations on crew chief contractors, who in some instances had taken advantage of those who worked for them. However, this obviously is not a concern in the instance I have described. The present arrangement has worked for years to the satisfaction of all involved. The teenagers are happy to have the opportunity to make a little money, the seed corn operators are pleased to have a source of labor within the community, and it is a valuable work experience for the teenagers, which I think is important. The present interpretation of the law helps no one.

Mr. Chairman, I join with my colleagues in urging you and the other members of this subcommittee to give this matter careful consideration and make the necessary changes during mark-up on legislation amending FLCRA to clear up the problem. Again, thank you for this opportunity to present my views before this subcommittee.

Mr. ANDREWS. Next we have Mr. Donald Elisburg, Assistant Secretary of Labor for Employment Standards, U.S. Department of Labor, who has with him, Mr. Xavier Vela, Administrator of the Wage and Hour Division.

You gentlemen may proceed.

STATEMENT OF DONALD ELISBURG, ASSISTANT SECRETARY OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY XAVIER VELA, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION; HERBERT J. COHEN, ASSISTANT ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, OFFICE OF FAIR LABOR STANDARDS; AND PAUL E. MYERSON, COUNSEL FOR EMPLOYMENT STANDARDS IN THE GENERAL LEGAL SERVICES DIVISION OF THE SOLICITOR'S OFFICE, DEPARTMENT OF LABOR

Mr. ELISBURG. If I might introduce my colleagues. On my right is Mr. Vela, who is Administrator of the Wage and Hour Division, on his immediate right, Mr. Herb Cohen, who is Assistant Administrator of the Wage and Hour Division, within the Employment Standards Administration, and on my left, is Paul Myerson, who is the Counsel for Employment Standards in the Solicitor's Office.

We have other staff members who we may ask to respond to particular questions as we go on. I will introduce them at the time that we call upon them.

I appreciate the opportunity to appear before you to discuss the Farm Labor Contractor Registration Act.

Before I discuss the legislative proposals which form the basis of this hearing, I will describe briefly the status of this statute which is so critically important to the welfare of thousands of agricultural workers. Before the beginning of the growing season last summer, we instructed the Wage and Hour Division to increase its FLCRA enforcement efforts for the remainder of fiscal year 1977 by 20 percent. As a result, for fiscal year 1977 through September 20, we had over 2,320 investigations under the Farm Labor Contractor Registration Act. This included investigations of over 1,260 farm labor contractors, 390 employees of farm labor contractors and over 670 users of farm labor contractor services. Of major concern to the Department of Labor is the fact that about 67 percent of the investigations disclosed the need for some remedial actions.

During calendar year 1977, we registered 8,212 farm labor contractors and issued identification cards to 4,294 full-time or regular employees. The total of 12,506 registrants was up from 9,707 in calendar year 1976. About 500,000 agricultural workers were members of registered crews in calendar year 1977.

Also during that year, assessments of civil money penalties in some 700 cases were in excess of $600,000. And, finally, the Secretary issued final orders in 90 administrative actions involving revocations, refusals to issue or renew, and suspensions of registration certificates.

I do not wish to overemphasize the statistical aspects of the enforcement of this law. However, the record I have just described, when placed in the context of the remedial purpose of this statute, and the frequently publicized difficulties of thousands of agricultural workers, suggests several conclusions.

First, many farm labor contractors have continued the practices which led to the original enactment of the Farm Labor Contractor Registration Act in 1964 and of the 1974 amendments. Secondly, we have just begun the long road to fulfilling the commitments to the agricultural workers this statute is primarily designed to protect.

I would also like to mention that Under Secretary of Labor Brown in June of last year designated the Employment Standards Administration as the Department of Labor agency to provide regional coordination for the Department's programs affecting agricultural workers. The purpose of this effort is to coordinate the activities and planning of the regional strategy for servicing agricultural workers in the respective areas of the country. A major component of this activity is liaison with non-Labor Department and nongovernmental groups with interests in such workers.

The legislative proposals which you have asked me to discuss with you today would have the primary effect of restricting the application of the Farm Labor Contractor Registration Act's protective provisions to but a few agricultural workers. Because the bills would tend to reverse the effects of the improvements made by the 1974 amendments, it would be well to review the conditions which led to these amendments.

Evidence presented at public hearings in 1973 and 1974 in both the House of Representatives and the United States Senate indicated that the Farm Labor Contractor Registration Act as originally enacted in 1964 had limited impact on the working and living conditions of agricultural workers. In addition, farm labor contractors were not fulfilling their obligations to the users utilizing their services. Agricultural workers were being misled as to the location and conditions of their employment. They were not receiving the full compensation to which they are entitled. Finally, the evidence was overwhelming that the enforcement provisions of the act were inadequate to effectively encourage compliance with the law.

In order to overcome these problems, the 1974 amendments (1) extended the act to farm labor contractors engaged in farm labor contracting activities without regard to the number of farmworkers involved and without regard to whether the contractors were engaged in intrastate agricultural employment; (2) provided a new exemption for farm labor contracting activities conducted within a 25-mile intrastate radius of the contractor's permanent residence and for 13 weeks or less per year; (3) limited the existing exemption from the definition of a farm labor contractor to only those persons personally engaging in any contracting activity for the purpose of supplying agricultural workers solely for their own operations; and (4) limited the existing exemption for full-time or regular employees of any of the named entities who engage in contracting activities solely for their employer on no more than an incidental basis.

The amendments also stiffened the conditions farm labor contractors would have to meet to qualify for certificates and adopted more realistic liability insurance and safety and health standards; broadened farm labor contractor obligations to the members of their crews; strengthened substantially the civil enforcement and criminal penalty provisions; and added the assessment of civil money penalties.

During 1975 and 1976, the Department of Labor faced serious challenges in implementing the requirements of the amended act. However, these difficultes are being overcome as we have gained on-the-spot experience with administering the amended act and with the guidance of a number of court decisions.

There were legal challenges to the Act as well as administrative problems associated with conducting registration and how this whole process was really to work.

The subcommittee has a number of bills before it, each of which would, to a certain extent, restrict the protection afforded agricultural workers by the FLCRA. After reviewing the proposals, we are forced to conclude that each bill would open major loopholes in the act. In our view, it is essential that the current coverage and protections in the Act be maintained. We therefore do not support any of these bills. I would like to go through these bills and reflect our concerns.

Mr. ANDREWS. Very well. I am not sufficiently familiar with the numbers of each bill in terms of who introduced it.

Mr. ELISBURG. Let me go through them that way then.

The first two bills are Mr. Stockman's bill.

Mr. ANDREWS. What page are you on in your statement?

Mr. ELISBURG. Page 6.

H.R. 7892 and H:R. 10810, which are Mr. Stockman's bills, would amend section 3(b)(2) to specifically exempt from the requirements of the Act, users who provide farm labor contractor services to other users within a 25-mile radius of their agricultural operation without a fee other than out-of-pocket expenses. The current exemption is confined to such users of agricultural workers only if they are personally supplying the workers for their own operations.

Where a few small individual farmers have made casual arrangements on a local basis to share the services of a common work force, it is not the practice of the Wage and Hour Division to allocate scarce resources to ascertain whether or not they are engaging in farm labor contractor activities. That was the situation Mr. Stockman was discussing a few minutes earlier.

We are concerned that the amendment proposed by H.R. 7892 and H.R. 10810 would exempt from the coverage of the act very large farm operations employing large numbers of agricultural workers. We do not favor opening up such a large loophole in the act.

Mr. ANDREWS. May I ask a question at this point?

It seems that you concede that small farmers in this circumstance should not be required to comply with the act but that large farmers should. Is that essentially what you are saying?

Mr. ELISBURG. I think that where you have a localized situation, where you have these small farmers who are on a very local basis exchanging this kind of labor, in what is perhaps not a very structured situation, that as an enforcement policy we would prefer to put our resources elsewhere. They are technically covered by the law but we have a limited number of resources to enforce this statute and we are trying to deal with the worst situations.

What we are concerned about is when you begin to carve out amendments to take care of special situations, you can frequently bring within the exemption, situations that should not be within that exemption.

Mr. ANDREWS. It bothers me some that you concede that in small, local, nonstructured sort of situations, the requirements of the act should not prevail. I wonder how the person who is in that circumstance knows that, whoever they may be. If he knew that he would be relieved of whatever——

Mr. GOODLING. Not only that——

Mr. ANDREWS. If he doesn't know how large you consider to be large or how small you consider to be small, how does he know if he should comply?

Mr. GOODLING. Not only that, I think I got the gist of his statement. He is saying if we had more resources we would get after them, too, because his statement was that we don't have the resources so we just go after the bigger offenders, or whatever. I am assuming that means if we had more resources we would really go after those little ones, too.

Mr. ELISBURG. I think whatever, large or small, if we found abuses of the work force we would go wherever they are.

With respect to the particular situation that we described, we did issue an opinion letter last June with respect to those employers in that area, and they were advised locally that we would not be engaging in enforcement activities with regard to that group.

Mr. ANDREWS. Are you speaking of a geographical area?

Mr. ELISBURG. Well, there was a particular question that came up as a result of a publication from the State of Michigan Extension

Service. They issued a newsletter release saying that the Government was coming after you. We did not approve that document and we had not indicated to them that from our perspective they should be writing that particular notice and we wrote a letter on June 27. This was a general opinion letter that goes out around the country to all of our area offices, and the conclusion of it was that for your information and guidance please be assured that it is not the intent of the U.S. Department of Labor to utilize its limited Farm Labor Contractor Registration Act resources in investigations of small individual farmers who share on a local and casual basis a common work force.

I will be glad to submit that for the record.

Mr. ANDREWS. Please.

[The letter to be supplied follows:]

JUNE 27, 1977.

We have been advised that you have recently introduced legislation which would broaden the existing farmer's exemption in the Farm Labor Contractor Registration Act to include farmers and their employees who provide migrant labor to other farmers whose farms are located within 25 miles and who receive no monetary consideration (other than reimbursement of actual expenses incurred) for the provision of such labor.

We further understand that your interest in this matter stems from communications from your constituents who might have contacted you as the result of the statement appearing on page 3 of the publication of the Cooperative Extension Service, Michigan State University, and U.S. Department of Agriculture Cooperating, dated May 31, 1977 (Mimeograph No. 27), entitled "Farm Labor Contractor Registration Act as amended December 1974: an Update Including New Interpretations." This publication was never approved by the Department of Labor which has responsibility for administering the Farm Labor Contractor Registration Act.

This statement reads as follows:

> A farmer employing and housing migrants and [sic] allows those migrants to work for a neighbor while continuing to house them may be a crew leader under the law. Failure to register could result in a $1,000 fine to him and a $1,000 fine to his neighbor. This interpretation may hold even when the neighbors pay no rent on the housing.

For your information and guidance, please be assured that it is not the intent of the U.S. Department of Labor to utilize its limited Farm Labor Contractor Registration Act resources in investigations of small individual farmers who share on a local and casual basis a common workforce. Additionally, under current policy, all such investigations involving alleged violations of the Act must be referred to and received [sic reviewed] by the national office of the Wage and Hour Division before any action can be taken. Clearly, we believe that this safeguard removes the necessity for the proposed legislation.

Sincerely,

DONALD ELISBURG, *Assistant Secretary.*

Mr. ELISBURG. Two of the bills to amend FLCRA—H.R. 8232 by Mr. Hefner and H.R. 8249 by Mr. Whitley—would substantially broaden the section 3(b)(4) exemption from the application of the act for farm labor contractors who operate within a 25-mile intrastate radius of the contractor's permanent residence and who operate seasonally for 13 weeks or less a year. A similar result would occur under H.R. 8233 by Mr. Hefner, H.R. 8234 by Mr. Hefner, and H.R. 8894 by Mr. Sarasin, which would remove from the coverage of the act the day-haul component of farm labor contracting. The expansion of the 25-mile radius provision to 50 miles in the case of H.R. 8249, and 75 miles in the case of H.R. 8232, would also foreclose protection for agricultural workers of day-haul contractors. In addition, H.R. 8232 would expand the exemption to interstate contracting and would eliminate the 13-week seasonality restriction. H.R. 8249 would raise the seasonality limit to 26 weeks.

We oppose all of these amendments. The abuses which FLCRA was designed to eliminate were found to apply to day-haul contracting in hearings which were held prior to the 1974 amendments. Section 3(b)(4) was carefully designed to permit a limited exclusion in local communities, that is, local, short-term, short-haul contracting using local help living in the communities where they work. These proposed amendments would not only open up farm employment to widespread employment of undocumented aliens, particularly along our border but in other areas of the country as well. The enactment of these provisions would remove not only safety and health standards and other protections in the act but also controls on unscrupulous contractors in a major segment of farm labor contractor activities.

The workers who would lose the protection of the act as a result of amendments to section 3(b)(4) are employed primarily in agricultural States. Most are employed in Florida, Texas, and California. Our investigations of day-haul contractors in these States have revealed widespread violations of all the provisions of the act. I have no doubt that the passage of such an amendment to section 3(b)(4) can only worsen the conditions of agricultural workers who very much need and deserve the protections now afforded by FLCRA.

H.R. 8894 by Mr. Sarasin, H.R. 10053 by Mr. McFall, and H.R. 10631 by Mr. Ireland, would make extensive changes in the application of the act. H.R. 8894 would expand the current exemption for nonprofit charitable organizations, and for public or nonprofit private educational institutions, or similar organizations to include any nonprofit organization. H.R. 10631 would add an exemption for bona fide nonprofit agricultural cooperatives engaged in labor contracting for their own members.

The purpose of these amendments appears to be to exempt from the coverage of the act users of agricultural workers involved in nonprofit associations designed to provide a variety of services for members. Within the context of the act, this would mean the type of services performed by a farm labor contractor.

H.R. 8894, H.R. 10053, H.R. 10631, and H.R. 10810 by Mr. Stockman, would modify the exemption for a user of agricultural workers "personally" engaged in farm labor contractor activties solely for his own operations. The bills would eliminate the requirement that the user personally engage in the activities and would modify the requirement that he supply the workers "solely" for his own operation so as to permit the agricultural workers to work on crops even though they are diverted from the user's operation.

H.R. 8894 and H.R. 10053 also broaden the exemption under current law for full-time or regular employees of users of agricultural workers if such employees engage in farm labor contractor activities solely for the user and only if the employees perform such activities on no more than an incidental basis. H.R. 10631 would substitute a new qualification—that is, that the employee to qualify for the exemption would not recruit migrants from more than 100 miles from the agricultural employment and not during any substantial portion of the year.

The bills would define a full-time employee as one who works year-round for the operator and a regular employee as one who is regularly employed on a seasonal basis. More importantly, they would delete the requirement added by the 1974 amendments that the exemption applies only if the employee engaged in the farm labor contractor activities on no more than an incidental basis. These changes would also permit a complete, or at least a substantial, evasion of the coverage of the act by simply putting a contractor on the payroll of the user of the agricultural workers.

These proposals would substantially narrow the act's coverage and would deny its protection to large numbers of agricultural workers. The addition of any nonprofit organizations or nonprofit agricultural cooperatives to the list of exempted entities would permit large agribusiness employers to join in ventures to contract for farm labor beyond the scope of the act.

We have been told by those who support this exemption that such organizations are fixed and have assets which would be reachable in a law suit by their employees. I think that we all have to recognize, generally, agricultural workers do not have the financial resources to independently assert their rights against such organizations, and we question why this economically disadvantaged group should be placed in this position.

It is our understanding that many of the organizations for which the proposed exemption is sought are funded by their members for each harvest season on a pay-as-you-go basis. Others have no funding at all and are merely empty corporate shells which operate with the employees and equipment of their members. In truth, there is no recourse against such organizations. This would be a clear invitation to evade the protections provided in the Act. Moreover, employment by a nonprofit organization has nothing to do with a need to protect agricultural workers under FLCRA, particularly if the nonprofit venture consists of profitmaking organizations.

The deletion of the term "personally" from the exclusion for agricultural operators would similarly eliminate coverage protection for large numbers of workers. Large corporations obviously cannot "personally" engage in farm labor contractor activities. However, they can employ others to engage in such activities. It should be noted that the current exemption applies to a sole proprietorship the owner of which engages in the contractor activities. We have interpreted the exemption also to apply to a farmer whose business is incorporated because he can personally engage in such activities, and to partners in a partnership who individually engage in such activities.

The word "personally" was given its dictionary meaning in interpreting the act since it appeared that Congress wished to exclude under the present terms of this exemption individuals or entities who acted in person with respect to their farm labor contracting activities, and who would by virtue of this personal activity be accountable and available to the employees to redress any employment-related problems.

Under the proposed amendments, corporations could utilize the services of irresponsible farm labor contracts by placing such individuals on their payroll. Abuses by these contractors would then be beyond the reach of the remedial provisions of the act. We have begun to make inroads in this area by putting the worst of these violators out of business. Any amendments which would provide a way for these irresponsible contractors to circumvent the statute as employees of entities referred to in section 3(b)(1) or 3(b)(2) would be a grave injustice to America's farmworkers.

The addition of the language to permit this exemption to apply even though the user's crops were diverted to another entity would also open up the exemption to additional entities—for example, where a user of agricultural workers has established a joint venture with a packer or processor who agrees to plant, cultivate, and harvest the crops. It also is not clear how this provision would apply if a farm labor contractor were also involved in the venture.

Both H.R. 8894 and H.R. 10053 would narrow the definition of "fee" used for the purpose of establishing whether an individual is a contractor to include only money or other valuable consideration "in excess of the actual cost of providing" the contractor services. Profit should not be the test. This change would create massive enforcement problems because it would be virtually impossible to determine "actual" costs. The definition of a fee under this law should remain as presently constituted in the statute.

In another area of some significance, H.R. 8894, H.R. 10053, and H.R. 10631 add a new definition of "transport" which would narrow substantially the protection for agricultural workers in section 5(a)(2). This section now requires proof of financial responsibility or of a policy of insurance which insures against liability for damages to persons or property arising from the contractor's owning, operating or causing to be operated a vehicle for transporting agricultural workers. H.R. 8894 defines "transport" in such a way as to limit the insurance requirement to the direct or indirect ownership or control of vehicles under circumstances which would impose legal liability for the operation of the vehicle. H.R. 10053 and H.R. 10631 would limit the requirement to direct or indirect ownership or control without the additional limit concerning legal liability. Under these proposed amendments, a contractor who for any reason causes workers to be transported by a private conveyance not directly or indirectly owned or controlled by him could evade the act's financial responsibility requirements.

H.R. 10631 would also conform the vehicle liability policy to the exclusive remedy provisions of the State workers compensation law if the contractor furnishes proof that he has a workers' compensation insurance policy providing benefits under State law for injury or death of the agricultural workers in connection with the contractor's business, activities, or operations as a farm labor contractor.

Again, we are opposed to this amendment. We have always taken the position that the employer-employee relationship is not a factor in the application of the Farm Labor Contractor Registration Act. With regard to the vehicle liability insurance protection, this is important because the employer-employee relationship may not be established while the agricultural workers are in transit to the place of agricultural employment. The exclusive remedy provisions of workers' compensation coverage rely on the employer-employee relationship and are more restrictive than the protections provided under the act. We therefore are of the view that workers' compensation protection required under State law is not a substitute for the vehicle liability insurance protection under the act.

In this same area, H.R. 8894 would revise the exception from the requirements of the act for common carriers or their full-time employees engaged solely in the transportation of agricultural workers by including in the exemption "fully qualified charter carriers." We understand that this change is intended to apply to persons other than common carriers who transport agricultural workers to the areas of agricultural employment.

You will note that the activities which the act defines as farm labor contractor activities include recruiting, soliciting, hiring, furnishing, or transporting agricultural workers. Thus, the act requires that a farm labor contractor comply with the relevant provisions of the act even if the contractor only engaged in the transportation of such workers. This has been the case since the act was originally enacted in 1964. This is a particularly important area of protection for farmworkers, who must be provided with adequate assurance of vehicle safety and insurance coverage.

The exemption for common carriers is clearly justified because they are covered by other Federal and State safety and insurance obligations. It is not clear to us what safety and insurance obligations would apply to the so-called "fully qualified charter carriers" or who or what is a "fully qualified charter carrier." We believe the protection of the workers justifies the continued application of the act to any carrier not within the common carrier category.

Finally, H.R. 10053 and H.R. 10631 would restrict the recordkeeping requirements applicable to users of farm labor contractor services. Currently section 6(e) of the Farm Labor Contract Registration Act requires farm labor contractors to maintain—One: payroll records including total earnings, withholding and net earnings for each payroll period, and two: other records concerning time worked and rate of pay, as well as units of work and rate per unit if paid on a piece-rate basis. The contractor is also required to furnish each worker pay stubs showing specified information concerning pay and withholdings.

Section 6(e) also requires, as a result of the 1974 amendments, that the contractor furnish these records to the users of the services of agricultural workers. Section 14 of the act places an obligation on the user of the contractor services to obtain and maintain those records. H.R. 10053 would strike this user obligation from section 14.

H.R. 10631 would delete the section 6(e) requirement that the contractor furnish the records to the user of the services and would repeal completely section 14, thus removing the obligation of the users of the services to maintain any of the records. Substituted would be a requirement that the contractor make the records available to the Secretary of Labor.

We oppose these changes. As you know, farm labor contractors are highly mobile and it is frequently difficult to locate records which may be necessary to pursue enforcement actions where violations have occurred. By requiring the users to obtain and maintain these records, we are able to facilitate enforcement of the act. Also the users of the contractor services are, together with the contractor, joint employers of the farmworkers. By placing an obligation on the users, the act helps to assure that farmworkers are treated fairly and in a manner consistent with the law.

To sum up, Mr. Chairman, we believe the protections and enforcement tools added to the act by the 1974 amendments were necessary and justified. The proposed legislation that I have discussed here today would seriously undermine the substantial improvements made by those amendments and open up the Farm Labor Contractor Registration Act to the very abuses which led to the enactment of the amendments. In other words, the thrust of these legislative proposals would be to deny essential protections of this law to many agricultural workers in this country—including preemployment notification of working conditions, safety and health standards for transportation and housing, vehicle liability insurance protection, prompt payment of earnings, protection against contractors with criminal records, and the right to rely on agreements made to workers and users of farm labor contractor services.

Thank you again for this opportunity to appear here today. My colleagues and I will be happy to respond to your questions.

Mr. ANDREWS. Very well, and thank you, sir.

Mr. Goodling, do you have any questions of either of the four gentlemen?

Mr. GOODLING. Yes, I have several questions, Mr. Chairman.

I kind of think that our problem is one of legislation which was written for one purpose and the interpretation got expanded somewhere along the line. I was under the impression that the purpose of the legislation was to cover migrant laborers who are moving in a steady flow from one job to the next. That is what I thought was the purpose of the legislation. I don't believe that is the interpretation given to it now.

The second problem that I see is I think that somebody took the wording of exemptions that appeared in the record and used those exemptions then that anybody who doesn't fit into those exemptions, therefore, is covered by the legislation. I don't think that was the intent either. Just because I imagine it was Mr. Meed who spoke louder than anybody else and got the Northwest Pacific or something like that in there didn't mean it was only to cover somebody in the Northwest Pacific area.

It meant it was to cover like situations all over the United States.

So I think those are two of the problems that we are faced with. My first question would be, you referred, Mr. Elisburg, in your testimony to agricultural workers and to farmworkers. I wonder for my own edification would you define, as far as the Department is concerned, what an agricultural worker is, what a farm worker is. That might help me in my understanding of this legislation.

Mr. ELISBURG. The definition of the workers is in section 3(g) of this statute. The term "migrant" worker means an individual whose primary employment is in agriculture as defined in section 3(f) of the Fair Labor Standards Act.

Mr. GOODLING. I had no problem with migrant workers.

Mr. ELISBURG. Or who performs agricultural labor as defined in section 3121(G) of the Internal Revenue Code on a seasonal or other temporary basis.

If I might go on. In our view, the definition did not contemplate the necessity of transferral by the agricultural worker.

Mr. GOODLING. Pardon?

Mr. ELISBURG. We have to go and look at the Fair Labor Standards Act definition.

Mr. GOODLING. Let me specifically ask you, you know, normally when I get into hot water back home on regulations and so on my quick reaction is, well, it was a bunch of young kids out of college that have never had any practical experience who wrote these regulations. Obviously I can't tell them that when I look at the group before me. At least I can't tell them young kids out of college. So I guess what I am driving at is the greatest experience for living in real life, that doesn't include Washington, D.C. that is not real life, is riding the bean buses as a high school kid, which I did many, many times.

Is that an agricultural worker as defined by this legislation? Simply because you have a couple of hours a day or a couple weeks in the summer or something and you decide you are going to pick strawberries or pick some beans, do you automatically get covered by this legislation?

Mr. ELISBURG. You may well get automatically covered. Some of the exemptions may apply to you. But to go back to the definition of "migrant worker" it means an individual whose primary employment is in agriculture as defined by the Fair Labor Standards Act. That definition is rather——

Mr. GOODLING. I have no problem with migrant worker. When you keep referring to a farm worker or agricultural worker, you are not saying that is automatically a migrant worker, are you?

Mr. ELISBURG. It is for certain purposes of this statute. That is, I suppose historically or traditionally there is a view of a migrant worker as someone who is traveling through the migrant stream and going from State to State on a kind of casual basis for——

Mr. GOODLING. His life's work?

Mr. ELISBURG. Yes.

Mr. GOODLING. That is what I assume the legislation was written for.

Mr. ELISBURG. And I would suggest, Congressman, that the statute goes beyond that understanding and has certainly to some extent, since 1964, and clearly since 1974 include many workers who work in agriculture who do not travel the migrant stream. They are maybe involved in the day-haul operation or maybe involved in other kinds of operations. The whole thrust of this statute is to deal with those workers who do not have a one-on-one direct employment relationship on a permanent basis on the farm.

Mr. Goodling. So the agriculture teacher that brings the agriculture class to spend a week or two harvesting apples is covered?

Mr. Elisburg. Yes.

Mr. Goodling. And you say that is according to the legislation, not the regulations?

Mr. Elisburg. Yes, sir.

Mr. Goodling. OK, then my next question. It is hard for me to believe that.

Mr. Elisburg. Pardon.

Mr. Goodling. If that is the way it is, it is just hard to understand any of my colleagues could have been that foolish.

My second question then, I think I remember you saying something in relationship to Congressman Sarasin. You said you opposed it. I didn't hear any reason.

What has your experience been with nonprofit farmers and co-ops?

You just said we opposed Mr. Sarasin's legislation. What has your experience been with the nonprofit farmers and co-ops?

Mr. Elisburg. Well, the co-ops are similar to the growers' associations. I want to check our investigative activities because we are tied up with a certain amount of litigation under that coverage.

Mr. Goodling. You mean has your experience been one these are bad characters and they are really abusing the workers and this kind of thing?

Mr. Elisburg. Well, I think to the extent that we have had some investigations, we have found some co-ops where there have been violations. I would like to, if I might, expand on this question of who is good and who is bad.

Under most of our statutes that cover almost any kind of labor standards, we presume ultimately that the person covered or the party covered will be complying with the law and to that extent will be a good employer. Nonetheless, they are covered by the laws, whether it is the Farm Labor Contractor Registration Act or the Fair Labor Standards Act, or any of our other labor standards protections. There is no way to define, as we understand it, the legislation as between the coverage of registration requirements of good employer versus bad employers.

Mr. Goodling. Have you had a bad experience?

Mr. Elisburg. Yes, sir.

Mr. Goodling. With these nonprofits? I don't mean somebody that reported somebody. Somebody who doesn't want to work is always going to report something.

Mr. Elisburg. We have had some investigations, some cases. Counsel Myerson has been dealing with some of these. I would like to ask him if he would respond to that particular issue.

Mr. Myerson. We have five cases currently in the Court of Appeals in California dealing with growers associations. The problem that we have with the associations is their refusal to register and, carrying with that, their refusal to carry insurance necessary for the protection of the workers.

Now, we have one of the five cases at the District level, and the other four are in the Appeals Court for the 9th Circuit. It will be some time before we reach a hearing. But our position is clear that whether it is for profit or not for profit is not the criterion as to whether or not under the statute they must register. The courts have agreed that they must register, and for that reason we are pursuing the enforcement.

The same would be true with nonprofit cooperative associations which are made up of groups of individuals who are supplying workers to each other.

Mr. GOODLING. You are saying this was primarily a registration business that they are not complying with rather than any kind of abuses?

Mr. MYERSON. Well, they are not carrying the insurance that is necessary. They are now because of the court orders.

They had to go out and get the insurance because the court would not stay the application of the injunction which we sought. They were not complying with the registration requirements, they were not complying with the identification requirements, they were not complying with the insurance requirements, people were being transported in vehicles which may or may not have been safe, and it is the whole gamut of what the statute was designed to protect.

Mr. GOODLING. Let me ask one question.

You heard Mrs. Smith read a whole section there from a committee report, and I am not going to read that whole thing, but just ask a couple of questions in relationship to that report.

First of all, it is my understanding that your department has taken the position that local school teachers and others must register as farm labor contractors where they recruit students, friends, relatives or other students for private summer work in corn detasseling and things of that nature. Is that correct?

Mr. MYERSON. That is correct. Of course, that particular issue involves transporting workers beyond the 25-mile exemption for intrastate activities allowed currently under the law.

Mr. GOODLING. Do you really think that this is consistent with the interpretation of the Congress or the intentions of the Congress as discussed in that committee report that Mrs. Smith read?

Mr. MYERSON. Well, I think that was the basis upon which the opinion was rendered. My recollection is that the whole matter came to us as a request from a grower.

Mr. GOODLING. She is talking about corn detasseling. I am talking about the same kind of thing all over the United States.

Mr. MYERSON. That particular opinion came as a request from the seed-corn growers of seed corn. It came to the Department as, "are we covered?"

Mr. GOODLING. My question is, is this the intention Congress had?

Mr. MYERSON. I think that we are trying to focus on protecting any group of growers, whether full-time workers or students, who are not within that immediate locality, that is, they start to move out beyond the 25-mile radius and it becomes a broader protection against many kinds of potential abuses as well as a protection of their interests.

Mr. GOODLING. Out 26, 27, 28 miles.

Mr. MYERSON. Well, it is hard to decide how to draw lines. From the standpoint of a labor standards protective approach, you probably could warrant covering the 25 miles. That is in the statute and that is what we have to live with. Perhaps less than 25 miles could also be defended. The point that we are trying to deal with here is you may have the protection for the students who might go out with respect to making sure that they are in safe vehicles, with respect to making sure that there is proper insurance on those vehicles.

Insurance on those vehicles is an important protection for them in the sense of labor standards protection.

The fact that someone is required to register and to make sure that the vehicles that they are using are safe they are in a sense a multiple protection. Frequently people are transported in a bus or in a truck that doesn't have appropriate insurance, and there is a great risk to these workers, whether they are fulltime workers or students, if one of these uninsured vehicles has a serious accident.

Mr. GOODLING. I don't have any other questions. I would like to make one additional comment.

You know, when Congress gets its rating 10 percent, 20 percent, whatever it is, 9 times out of 10 that has no reflection whatsoever on what Congress has or hasn't done because the only people that are constituents, really associates of Government are, of course, the people who are employed by the Government, whether it be IRS or Labor Department or whatever. My hope is that some real good common sense is used when promulgating regulations and carrying out what the intention of the law was when it left the Floor of the House or when the President signed it, and there are so many things that come before us and I will have to bring them individually to you that don't make sense to me. If that is the interpretation that is being given them we need to do something.

Perhaps you don't like the legislation that has been introduced, but apparently we need to do something to bring a little bit of common sense into this business of trying to be competitive on the international market.

I have no other questions.

Mr. ANDREWS. Mr. Causey do you have any questions as counsel for the subcommittee?

Mr. CAUSEY. Yes, sir, just a few, Mr. Chairman.

Mr. Elisburg, how many cooperatives were registered as farm labor contractors in 1977?

Mr. ELISBURG. I believe that was one of the questions that was submitted to us, and my understanding is that we do not keep registration figures that would separate out cooperatives, and associations, and other forms of registration.

We have got something over 12,000 contractors of one kind or another registered.

Mr. VELA. Excuse me. If I may add to that. One of the things we try to do is keep the information on those applications from a contractor to a bare minimum, that is, we don't ask them for information which would go beyond that absolutely necessary.

Mr. CAUSEY. I am sorry, but I believe that is incorrect. I have here the application for registration. Column 2 requests the applicant to check whether he or she is an individual, partnership, corporation, cooperative, association, other, please specify. I think it would be helpful to the subcommittee if we could have a breakdown of registrations by individuals, cooperatives, corporations. I presume from the application this information is maintained.

Mr. ELISBURG. I think that the application speaks for itself, that we request certain data. The problem is that we don't necessarily go and tabulate all of those items for our statistical purposes. That application is also used for investigative activities and used to find out where they are going and so forth but we will endeavor to try to provide that information if we can obtain it.

[The material to be supplied follows:]

We do not make such a tabulation in our statistics, either of registrations or of investigations. We do, however, have figures of registered farm labor contractors as individuals and nonindividuals. These figures, for calendar year 1977, are:

Region	Individuals	Others	Total
I. Boston	4	2	6
II. New York	112	3	115
III. Philadelphia	86	3	89
IV. Atlanta	3, 230	238	3, 468
V. Chicago	97	2	99
VI. Dallas	2, 535	43	2, 578
VII. Kansas City	20	0	20
VIII. Denver	74	4	78
IX. San Francisco	739	125	864
X. Seattle	205	2	207
Total	7, 102	422	7, 524

Mr. CAUSEY. Let me follow that up for one second, if I may. Do you have a breakdown by these categories with respect to enforcement actions or investigations?

Mr. COHEN. No, sir, we do not tabulate our enforcement statistics by such categories. They are broken out by growers or crew leaders, contractors, or farm labor contractor employees. They would be broken that way, numbers of investigations against those classes of persons.

Mr. ELISBURG. Your question was number of investigations by the Department resulting in compliance actions with respect to farm labor contractors, farm labor contractor employees, and farmer growers.

We have that breakdown with respect to the number of farmers, growers, as it were, where we had compliance actions. In 1977, 676, employees of farm labor contractors, 390, farm labor contractors themselves, was 1261.

Mr. CAUSEY. Could you briefly describe the process within the Department when you serve a complaint, and how you go about investigating a complaint which is filed with the Department by a third party?

Mr. COHEN. Well, complaints are given priority, in this program in particular, as opposed to other programs that we administer. Because of the migratory nature of some of the crews, we attach a great deal of priority to investigating complaints, trying to deal with it while the crews are still in the immediate area. We have an agreement internally dealing with complaints received from the State employment services which do receive probably the largest number under the Farm Labor Contractor Registration Act to insure that these complaints are handled expeditiously at the local level.

They would be forwarded from the local employment service office to the nearest wage hour local office so as to not go up through the State hierarchy and then down through the Federal system.

Other than that we try to get a compliance officer out to the scene as quickly as possible and apply the law as we see it.

Mr. Causey. I would presume that certainly a farmworker could file a complaint and perhaps a farmer could file a complaint. Would there be any other types of individuals who may file a complaint?

Mr. Cohen. Well there are certainly no restrictions or limitations. We receive complaints frequently from local migrant legal action organizations who become aware of problem situations.

Mr. Causey. How many complaints were filed in 1977 and could you break that down according to category of the type of individual who filed the complaints?

Mr. Cohen. No, I am sure we would not compile it by the type of individual who filed the complaint.

I believe I can give you a breakout on the number of complaints referred to us by the State employment services and the number otherwise received.

Mr. Elisburg. While he is trying to find those numbers I would like to point out our compliance activities are not solely limited to complaint activity. As a matter of fact, we try to engage in direct enforcement, in areas where we think there are potential abuses so that we have some kind of a broad coverage over the country, and the particular migrant area, day haul areas which I mentioned in my testimony where there are extensive farm labor contractor activities, and so our conducting an investigation of a particular contractor might or might not be as a result of complaint and we would conduct essentially a similar investigation whether we went on a complaint basis or not.

Mr. Cohen. To illustrate that, we can provide the numbers for the record. I don't have it right here. But I would say that of the 2,300 investigations, probably somewhere in the range of 300 which may have been based upon a complaint and the remainder were what we call directed investigations in areas dealing with crews where we had reason to believe that there may have been problems.

[The material to be supplied for the record follows:]

You asked for information concerning the number of complaints we have received from the state employment services and from other sources. That information is available on a fiscal year basis, most recently for fiscal year 1977:

Region	ES complaints	Other complaints	Total complaints
I. Boston	0	0	0
II. New York	101	27	128
III. Philadelphia	1	30	31
IV. Atlanta	25	117	142
V. Chicago	21	15	36
VI. Dallas	1	62	63
VII. Kansas City	1	16	17
VIII. Denver	1	12	13
IX. San Francisco	8	100	108
X. Seattle	15	1	16
Total	174	380	554

Mr. Causey. I believe four of the bills which have been introduced deal with the question of striking the word "personally" in section 3(b)(2) of the act. You address this on pages 11 and 12 of your statement. What is there in the legislative history or in your personal experience with the development of this act that has led the Department to the conclusion that the word "personally" is not meant to apply to a corporation? Second, is it true that the act itself defines a person as a corporation?

Mr. Myerson. The statute prior to 1974 did not contain the word personally. The sole change made in the statute, in the definitions and the requirements, as to who is or is not engaged in the activity, is the addition of one word, personally. In order to give it any meaning at all it had to be given the meaning that is normally given to the word personally. The statute was not changed in any way, shape or form except they inserted one word, personally.

Mr. Causey. That is with respect to section 3(b)(2)?

Mr. Myerson. That is right. Under section 3(b)(2) it said you had to engage personally, and it had to be given a meaning. There had been no other change made in the legislative history all the way from 1964 forward. We then took the position of equal enforcement and uniformity, and the way we had viewed the same word in the Fair Labor Standards Act was keyed into this Act. Internal Revenue's use of the word personally also was keyed in because of your definition of agricultural worker, and we followed the same line of approach that personally, in order to be given a meaning meant the person had to engage in the activity him or herself.

There could have been no other reason for putting it in. The legislative history itself does not mention it anywhere except that it appears in the bill.

Mr. Causey. The legislative history of the addition of the word "personally." Is it conceivable that the word was inadvertently added in 1974, and that is why it was not addressed in the committee reports?

Mr. Myerson. Well, again, we are charged with the enforcement and carrying out of the law as written. We did investigate the history, we did assume that Congress in its enactment of the statute had a reason for putting it in and we gave it a meaning.

Mr. Causey. Weren't you surprised there was no reference to that in the committee reports? If one word was added to the act in 1974, yet in its reports to Congress the legislative committees did not mention the fact that they added a word, doesn't that raise a question as to why the word was added? It certainly did to me when I went back and read the committee reports.

Mr. Elisburg. It might or might not and I would certainly, from my past experience, not want to postulate on why words are in or not in statutes, and why committee reports do or don't cover every item, and the whole process of the legislative history. I think our interpretation though is designed to reach those people we think the statute intends to reach such as the middlemen, as it were in the employment process.

I think that when you look at the other side of our interpretation of the word "personally" with respect to corporations, we look at where you have a small corporation, that is, an individual who incorporates himself, and we have allowed an interpretation to enable that person to still engage in activities that would be exempt. We looked at personally, if you extended it to the full corporation, to add personally would be in effect a subterfuge, to be used as a subterfuge in the operation of the statute on that corporation and people employed by it. When you talked about employees who engage in incidental activities as opposed to full-time activities, clearly there was an intent to reach the employees of those employers if they were engaged in these kinds of recruiting activities.

So to use the other interpretation to expand this exemption to corporations, expand personally to reach all of the corporations would be to negate that whole piece of legislative history and that would take the protected employees out from under the coverage of the act and we think that the Congress clearly intends for us to reach as many employees as we can unless they are very specifically exempted from the coverage. That is the way we look at any of our statutes.

Mr. CAUSEY. I just have one more question, Mr. Chairman.

In your statement you state the Department opposes the provisions in Mr. Ireland's bill which address the question of insurance. Is it true that in 1976 the Department permitted this exact type of situation to exist in the State of California?

Mr. ELISBURG. I am not familiar with that. Perhaps one of my colleagues can respond to that.

Mr. CAUSEY. If that is true, why was that practice terminated and what was the problem with that situation?

Mr. ELISBURG. If it is what I believe I think Mr. Cohen may be able to respond there was an interpretation and I think we decided it was wrong.

Mr. COHEN. That is correct, we did permit that in California and there was notification to the registered crew leaders in California.

Upon reexamining that position, I believe that position was dropped at the time the revised regulations were put out.

Mr. CAUSEY. Why was it limited just to California? Our understanding is that 29 States have a statute similar to the one in California?

Mr. COHEN. Well, the issue was raised with us in California and while 29 States may have some type of legislation, the protections and coverage of workmens' compensation for agricultural workers varies widely. I doubt that there are any two States that would be identical and California certainly, I believe, came closer, or closer than any other State and I could stand corrected on Florida, but at least at that time we were examining California, that was proposed to us, and based on our initial review we agreed to permit workmens' compensation to meet the Florida insurance requirements, but again after reexamining that position it was dropped and we are now satisfied that none of the State workers' compensation laws really fully satisfy the insurance provisions as they now stand in the law.

Mr. CAUSEY. Therefore is that the reason that this practice was terminated in California, is because the California statute did not adequately provide coverage?

Mr. COHEN. That is correct, it did not meet the standards set out in the Farm Labor Contractor Registration Act which incorporates the DOT requirements.

Mr. Causey. What would be the——

Mr. Elisburg. I was about to add, it is not clear to me that under the requirements of the statute, as I indicated in my statement, the nature of the relationship between the workers and the crew leaders, that a workers' compensation statute would necessarily reach all of the protections that are designed to be reached by this insurance requirement. That is the nature of workers' compensation being the employee-employer relationship might even, if the benefit levels were there, might be so restrictive as to exclude some protections that our insurance provisions otherwise cover.

Mr. Causey. It is my understanding that is what the Ireland bill attempts to do. It would not necessarily leave a gap but it would provide that in States where there is workmens' compensation provisions, if there is an accident in the employee-employer relationship, it would be the exclusive remedy for workmen's compensation, and the farm labor contractor would still be required to have insurance.

Mr. Elisburg. The benefit levels under the workmen's compensation coverage to the extent there is any, may be well below the protections that would be provided by our insurance coverage. In that case we would be very concerned about that kind of carving out under state law.

Mr. Causey. Do I read from your statement, then, that if a state had workmen's compensation equal to or in excess of what you believe to be adequate, then the Department would permit the dovetailing of workmen's compensation?

Mr. Elisburg. I would certainly be willing to look at that.

Mr. Causey. Your principal concern is certain statutes in certain States may not provide the coverage?

Mr. Elisburg. Yes, sir.

Mr. Causey. That is all. Thank you, Mr. Chairman.

Mr. Andrews. May I ask, has the Department published any regulations pursuant to the 1963 act or the 1974 amendments?

Mr. Elisburg. Yes, sir. 29 CFR post 40.

Mr. Andrews. Have you published any interpretative regulations?

Mr. Elisburg. Well, I must confess, Mr. Chairman, I asked that question myself when I took office and an interpretive bulletin is in

Mr. Andrews. But there has not thus far been any?

Mr. Andrews. But there has not thus far been any?

Mr. Elisburg. No; we would have a series of interpretive, legal interpretations and operational instructions, things like that, to flesh out, but to the extent there is a comprehensive bulletin such as we have in the Fair Labor Standards Act and other statutes, a detailed guide, interpretive bulletin, we do not have that.

Mr. Andrews. You expressed the desire to make sure that farm workers who are hauled in vehicles, I suppose other than their own, be hauled in safe vehicles. Who makes the determination of whether a particular vehicle is in safe operating condition? And how do you make that determination?

Mr. Elisburg. Well, my understanding is that the statute allows either State or Federal inspection, and I guess in most cases we rely on the State inspection certificate of some kind.

Mr. Cohen. Yes; if the vehicle has been inspected and meets the State standards that would satisfy us.

Mr. ANDREWS. Is there any inspection required other than just my vehicle or anybody else's vehicle in a given State? In other words, in our State they inspect it once a year, and certainly that would not furnish any assurance that on a given day within the year that vehicle is in fact safe.

Is your requirement something in excess of that?

Mr. COHEN. No, it would not be in excess of meeting the State requirement. All States do not have State vehicle inspections and in those cases the individual would have to take it, and there is a Department of Transportation list which can be used, and they would have to take it to a station, garage, et cetera, that conduct a sufficient inspection and certify on the form that it met those requirements.

Mr. ANDREWS. As to insurance, how much insurance is required of a contractor who transports farm workers as defined in the act?

Mr. COHEN. It depends on the size of the vehicles. For vehicles transporting 12 or less it would be $100,000, $300,000 and $50,000, and for more than 12 it would be $100,000, $500,000, and $50,000.

Mr. ANDREWS. How many employees do you have in the Department who are engaged either full or part time in the enforcement of this law, inspections and otherwise?

Mr. ELISBURG. Well——

Mr. ANDREWS. Approximately?

Mr. ELISBURG. We have approximately budgeted positions in staff years for this law under the current fiscal year, approximately 37½ staff years, but that is divided among our entire investigative working force and around the country. For example, we expect to have the equivalent of 30.1 full-time staff years of investigation time during this fiscal year 1978, but that is spread among many of our 1,100 compliance officers. So some might be the equivalent of fulltime for 3 months on farm labor investigations, some might only put in a few hours, it depends where there are growing seasons and where the need is. But at one time or another, we have available the compliance staff in the Wage Hour Division. Of their budgeted hours and budgeted investigative time, we have 37½ staff years budgeted for that.

Mr. ANDREWS That is all I have.

Mr. GOODLING. Mr. Chairman, I would like "Edie" to ask one question. then I would like to make one final comment.

Ms. BAUM. I noticed in your statement you use the word "joint employers." On page 17 of your statement you say together with the contractors using joint employer.

I am aware of your use of joint employer under the Fair Labor Standards Act. You are not implying here though that a user or a farmer or something is a joint employer for enforcement purposes under this act: for instance, if a farm labor contractor commits some violation you are not coming against the user here.

Mr. ELISBURG. That is correct. As a matter of fact, if I could take a minute of the committee's time, Mr. Vela and I were down in south Florida just this week doing some farm labor contractor inspections and investigations and discovered——

Ms. Baum. That was tough——

Mr. Elisburg [continuing]. In the middle of the Everglades. One of the things we ascertained, one of our officers based in regard to Homestead, Florida has just secured a temporary restraining order against a farm labor contractor for violating this act and the kind of violations that were involved were so serious we asked for a preliminary injunction which was granted by the court.

If I could just list some of the things that we found to point out why we are concerned about some of the exemption questions that are raised in these bills, because they might have excluded this contractor from coverage and, therefore, the workers from protection.

I mentioned it does involve what Ms. Baum mentioned as well about joint fair labor standards type of violations. This was an unregistered contractor who was recruiting and soliciting and hiring and transporting workers to pick and harvest tomatoes. The contractor had failed to advise the workers and misled the workers as to the terms and conditions of employment. The contractor falsified the terms and conditions of the employment. The contractor did not keep any records of the hours worked or the wages paid, he did not pay the workers the wages due them, and in fact the wage rate was below the Fair Labor Standards Act minimum.

The contractor maintained a company store, overcharged the workers for goods supplied, and required the workers to purchase goods solely through the company store. He transported the workers without insurance in uninspected vehicles, housed the workers in unapproved labor camps, knowingly made misrepresentation in applying for a certificate of registration, and finally, prevented the workers from voluntarily selecting their places of employment by coercion and intimidation, and that is not atypical of what we still find running through this crew leader enforcement program. Hopefully we don't find all of the contractors as gross in their violations as this one, and most of the contractors who register and most of the associations who register are registering, providing the insurance and are not violating the law.

Most of the people that we inspect and investigate don't violate the law, but as I indicated in my testimony, almost two-thirds of the investigations that we conduct now we do find one or more violations of this act. So we do feel we have very serious enforcement problems.

Mr. Goodling. That brings me to my final statement. In section 2(A) the Congress here finds that the channels and instrumentalities of interstate commerce are being used by certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products.

I have no problems with that whatsoever. My problem is I have an awful lot of people, if they are telling me the truth, who are the agricultural producers, who are being exploited by the Federal Government. That was not the intention of the act. And one other statement. I would think that you folks just with some departmental administrative changes could do something about the recordkeeping that won't take legislation. I would think that you could get on top of that and certainly minimize the problems caused by recordkeeping.

Mr. CAUSEY. I have just one final question. In the material that you supplied the subcommittee last week, you indicate a list of 1977 civil money penalty assessments per violation and the largest category in terms of dollar amounts assessed is in the category of undocumented workers. You indicate number of violations as 46 and the dollar amount assessed as $184,800. Under the act there can only be civil money penalty assessment of not more than $1,000. When I divided 46 into $184,000, I get more than $1,000. Is the assessment per undocumented worker higher for the worker who hires more than one undocumented worker?

Mr. COHEN. It is per illegal alien hired. The number of violations would be the number of contractors who were in violation of that provision.

Mr. CAUSEY. So one contractor who knowingly hired three undocumented workers could be assessed up to $3,000?

Mr. ELISBURG. Yes, sir. What is our current assessment, $400?

Mr. COHEN. $400.

Mr. ELISBURG. Currently we have authority up to $1,000, but our civil money penalty per alien is $400, generally. If it is aggregated it could go higher.

Mr. VELA. I wonder if I might add something. First of all, as Mr. Cohen and Mr. Elisburg clarified, I was mistaken in what is required in that application. The point I did want to make is that there we do not tabulate our applications in that way and there is no concerted effort to go after a certain kind of farm labor contractor, that is, one who may be a cooperative or anything. So I did want to clarify that.

The second point, Mr. Chairman, I had the pleasure of being before this committee just a few months ago and the term illegal alien was used and the term undocumented worker was used, and you expressed some curiosity about the origin of this term and so I thought of you as I was browsing through the Wall Street Journal on the 8th of this month, and I will read this letter to the editor, it is very brief.

It is from Peter Hirst, the information director for the Federal Immigration Bar Association, and he says, "this is in response to your article Pizza, Big Cheeses, in which you made several references to illegal aliens. In this regard I draw your attention to a July 25, 1977, memorandum from Nato B. Sorta, Deputy Commissioner of the Immigration and Naturalization Service to service employees, which states that the term 'undocumented alien be used in place of illegal alien'." The memorandum further notes that the new term has been accepted as proper usage at all levels of the Federal Government. What is objectionable about the term illegal alien is a strong adverse connotation the word illegal has. A fact little known to the general public is that immigration violations are in almost all cases civil in nature, not criminal. The documented aliens are not criminal and do not deserve a term which suggests that they are."

I thought I would bring that along.

Ms. BAUM. In your civil money penalty assessment, do you have a scale, a general scale that you use for each violation?

Mr. **Elisburg.** Yes, sir.

Ms. **Baum.** One violation is worth so much?

Mr. **Elisburg.** We do have a general scale.

Ms. **Baum.** Yes. Can we get a copy of that?

Mr. **Vela.** Yes.

Ms. **Baum.** Thank you.

[Information referred to above follows:]

U.S. Department of Labor,
Office of the Assistant Secretary for Employment Standards,
Washington, D.C., February 10, 1978.

Mr. William F. Causey,
Counsel, Subcommittee on Economic Opportunity, Committee on Education and Labor, House of Representatives, Washington D.C.

Dear Mr. Causey: The Employment Standards Administration is pleased to provide you with the following information on the Farm Labor Contractor Registration Act, as amended per the request in your letter of December 21, 1977 to Assistant Secretary Ernest G. Green. The responses to your questions are set forth in the enclosures in the same order as posed.

I appreciate having the opportunity to testify before the Subcommittee. If further information should be needed please let me know at our meeting on Monday, February 13.

Sincerely,

Donald Elisburg, *Assistant Secretary.*

Enclosures.

NO. 1

The number of applications received for (1) initial and (2) renewal registrations of (a) individuals other than farmers, (b) farmers, (c) canners, (d) packing shed operators, or other associations which do not operate a packing shed, deemed to be farm labor contractors for the calendar years 1975, 1976, and 1977.

Applications request the information required in the statute. The listing of occupations or other business interests of the applicant, other than engagement in FLC activities, is not required by the statute. Thus, no statistics are maintained by the categories requested.

Number of applications received (initial and renewals)

Calendar year:	
1975	7, 344
1976	10, 469
1977	11, 742

NO. 2

The number of certificates and identification cards of (a) individuals other than farmers, (b) farmers, (c) canners, (d) packing shed operators, or other associations which do not operate a packing shed, deemed to be farm labor contractors for the calendar years 1975, 1976, and 1977.

See number 1.

Number of certificates and ID cards issued

Calendar year:	
1975	5, 463
1976	9, 707
1977	12, 506

NO. 3

The average daily period of delay with respect to the expiration of existing certificates of registration and the renewal of new certificates of registration by category of regional offices of the Department. In addition, if possible please specify the following States: (a) California, (b) Florida, (c) North Carolina, (d) Texas, and (e) Washington.

Registration is accomplished by filing an application with one of Wage and Hour's ten regional offices, with the exception of Florida and New Jersey, the States with which we have Federal-State agreements. The Regional offices have not maintained statistics regarding the average daily period of delay for issuances of certificates and ID cards. The various State Employment Service offices act as a channel for the receipt and referral of applications. We are aware of backlog problems that have existed within those Regional offices which are responsible for the majority of the certificates issued. The basis for the backlog problem during the first several months of each calendar year results from the large volume of work generated by the statutory expiration of all certificates on December 31. The recently implemented agreement with the State of Florida should serve to greatly alleviate the delays previously experienced. The Atlanta Regional office is now operating on a current basis for all other States within the Region including North Carolina. The San Francisco Regional office is currently experiencing a delay in issuance which is directly attributable to the calendar year expiration of all certificates and ID cards. The Seattle Regional office has no backlog at this time and issues certificates within 2 days of receipt of complete applications. The Dallas Region during the majority of the year issues certificates within 3 days of receipt of a complete application. However, during the first few months of the calendar year, the influx of applications results in a temporary backlog.

NO. 4

The occupation of individuals other than farmers deemed to be farm labor contractors for the calendar years 1975, 1976, and 1977.

See No. 1.

NO. 5

An estimation of the number of migrant and seasonal workers on applications as defined by the Act for the calendar years 1975, 1976, and 1977.

ESTIMATED NUMBER OF WORKERS

	Calendar year 1975	Calendar year 1976	Calendar year 1977
Region:			
I	70	1, 254	623
II	5, 755	3, 678	8, 395
III	2, 086	5, 076	2, 741
IV	36, 144	88, 205	108, 039
V	1, 380	2, 145	147, 234
VI	51, 207	67, 762	92, 498
VII	742	647	735
VIII	1, 389	2, 197	6, 374
IX	44, 879	68, 306	92, 977
X	5, 478	5, 030	18, 462
Totals	149, 130	244, 300	478, 078

NOS. 6 AND 7

(6) The number of complaints filed with the Secretary regarding possible violations of the Act by category of (a) not registered, (b) no registration card, (c) housing, (d) unauthorized transportation, and (e) no vehicle insurance for calendar years 1975, 1976, and 1977.

(7) The number of investigations by the Department in response to complaints filed with the Secretary by category of (a) not registered, (b) no registration card, (c) housing, (d) unauthorized transportation, and (e) no vehicle insurance for calendar years 1975, 1976, and 1977.

Information regarding the total number of complaints filed by category of complaint is not available. Information regarding Employment Service referred complaints acted upon is set forth below:

EMPLOYMENT SERVICE REFERRED COMPLAINTS ACTED UPON

	Fiscal year 1975	Fiscal year 1976	Fiscal year 1977
Total (unduplicated)	46	286	157
Findings:			
(a) Not registered	44	157	51
(b) No registration card	39	54	11
(c) Housing	NA	NA	NA
(d) Unauthorized transportation	NA	115	32
(e) No vehicle insurance	35	116	17

NA = not available.

NO. 8

The number of investigations by the Department resulting in compliance actions with respect to (a) farm labor contractors, (b) farm labor contractor employees, (c) farmers/growers for the calendar years 1975, 1976, and 1977.

Information is available only on a fiscal year basis.

	Fiscal year 1975	Fiscal year 1976	Fiscal year 1977
Compliance actions	910	2,398	2,327
Farm labor contractors	716	1,491	1,261
Farm labor contractor employees	194	461	390
Users	NA	446	676

NA = not available.

NO. 9

The number of investigations by the Department resulting in the assessments of civil penalties with respect to (a) farm labor contractors, (b) farm labor contractor employees, and (c) farmers/growers for the calendar years 1975, 1976, and 1977.

Since Civil Money Penalties were not assessed until subsequent to January 1, 1977 no information is available for 1975 or 1976. For CY 1977, the Department assessed penalties totaling over $627,000 involving 698 investigations. A breakout by type of investigation is not available at this time, however for 1978 we are recording the assessment cases by type of investigation. Data on the number of assessments and money penalties by region as well as by type of violation is available and is presented below and on the following pages:

Region	Number of cases assessed	Dollar amount
Boston	0	0
New York	33	$19,500
Philadelphia	86	47,475
Atlanta	264	300,080
Chicago	80	28,575
Dallas	156	115,635
Kansas City	14	3,100
Denver	11	6,575
San Francisco	49	103,245
Seattle	5	2,950
Total	698	627,135

CALENDAR YEAR 1977—CIVIL MONEY PENALTY ASSESSMENTS BY VIOLATION, FARM LABOR CONTRACTORS AND FARM LABOR CONTRACTOR EMPLOYEES

	Number of violations	Dollar amount
Farm labor contractor, farm labor contractor employee violations:		
1. Failure to register	197	$98,100
2. Failure to exhibit certificate	13	1,000
3. Disclosure to workers	131	11,125
4. Posting at worksite	140	5,025
5. Misrepresentation to workers	7	2,400
6. Failure to keep required records	19	4,475
7. Recordkeeping incomplete or inaccurate	68	9,460
8. FLC records furnished to user	66	4,800
9. Statement of amounts contractor received to worker	126	8,900
10. Illegal alien workers	46	184,800
11. Proper money payments	7	2,100
12. Worker purchases	3	500
13. Transporting without certificate authorization	91	33,400
14. Operating vehicle used to transport workers	131	17,300
15. Vehicle safety	83	28,200
16. Vehicle insurance	98	79,500
17. Notification to Secretary of vehicle change	1	25
18. Housing workers without certificate authorization	27	10,000
19. Housing safety and health	12	6,750
20. Posted housing conditions	34	1,225
21. Notification to Secretary of housing change	0	0
22. Knowingly made misrepresentations or false statements in application	14	7,000
23. Certificate holder is not real party in interest	3	2,300
24. Failure to abide by agreement with workers	5	1,600
25. Breach of agreement with user	3	1,000
26. Discrimination against workers testifying	0	0
27. Engaging unregistered farm labor contractors	10	15,000
28. Hiring unregistered farm labor contractor employees	67	46,400
29. Knowingly employing farm labor contractors disqualified from holding a certificate or ID card	0	0
Totals	1,402	582,385
User violations:		
30. Engaging unregistered FLC	47	33,250
31. Failure to keep required payroll records	3	1,000
32. Failure to keep complete and accurate payroll records	3	400
33. Failure to obtain and maintain contractor records	31	7,800
34. Failure to obtain complete contractor records	15	2,300
35. Discrimination against workers testifying or exercising rights	0	0
Totals	99	44,750

NO. 10

Categorical number of initial or renewal applications for certificates of registration refused, suspended or revoked pursuant to Section 5(b)(6) of the Act.

Since the 1974 Amendments to the Act, the following number of administrative actions pursuant to Section 5(b)(6) have been taken on certificates of registration and/or farm labor contractor employee identification cards.

1975	4
1976	17
1977	12

NO. 11

The categorical number of complaints, investigations, and assessments of civil penalties pursuant to section 6(f) of the Act for calendar years 1975, 1976, and 1977.

Categorical number of complaints, investigations, and assessments of civil penalties pursuant to section 6(f) of the Act for 1975, 1976, and 1977.

	1975	1976	1977
Section 6(f):			
Number of complaints	NA	NA	NA
Number of investigations	NA	NA	NA
Assessment of civil money penalties:			
Number of actions	NA	NA	46
Amount assessed	NA	NA	$184, 400

NA = Not available.

NOTE.—461 illegal aliens found knowingly employed.

Information by category (i.e., Section 6(f) of the Act) is not available as requested. All investigations include a check for compliance with section 6(f). Note: CMPs were not assessed until 1/77.

NO. 12

The Department's assessment of the effectiveness of enforcement efforts pursuant to the Act.

During 1977, significant gains were made in the enforcement of the Farm Labor Contractor Registration Act. This strong enforcement effort, which we are carrying forward, has proven to be the most effective tool for achieving compliance. The Wage and Hour Division has, in particular, concentrated on known, repeated violators of the statute in an effort to halt some of the more serious violations of the law which have impacted adversely on migrant workers. Enforcement time expended has increased over the last few years from 6.4 work-years in FY 1975 to 12.7 work-years in FY 1976, and up to 26.3 work-years in FY 1977. Plans for enforcement time in 1978 include a further increase in time to over 30 work-years. Nearly one-half million farmworkers were employed by registered farm labor contractors during 1977, which is double the number of migrant workers provided the protections of the statute during the preceding registration year (1976), as evident in our response to question number 5. This increase in the number of protected workers corresponds to the vastly increased number of registered farm labor contractors/farm labor contractor employees since the Wage and Hour Division assumed responsibility for enforcement of the statute in late 1972. The number of registered farm labor contractor/farm labor contractor employees for 1972–1977 is shown below:

	1972	1973	1974	1975	1976	1977
Total	1, 372	1, 931	1, 792	5, 463	9, 739	12, 506
Farm labor contractors	1, 211	1, 572	1, 435	4, 014	6, 887	8, 212
Farm labor contractor employees	161	359	357	1, 449	2, 852	4, 294

Assessments under the civil money penalty provisions of the law since January 1977, when the first penalties were levied, now total over $600,000 on over 700 cases. The provisions of the law which afford the greatest protection to migrant workers, especially compliance with housing and transportation safety and health standards, have been stressed. Over 33,000 migrant workers employed by investigated farm labor contractors were affected. Wage and Hour has provided training to field personnel to provide an upgrading of investigation reports to support the imposition of the Act's sanctions. As an aid to enforcement efforts, the Division has a monthly computerized tracer list which provides compliance officers with investigative histories of farm labor contractors, farm labor contractor employees and users of farm labor contracting services. In addition, a monthly Public Central Registry is available as required by section 5(d) of the Act.

NO. 13

The extent to which the Department has cooperated in the past or intends to cooperate in the future with States regarding registration and compliance efforts pursuant to the Act.

During 1977, the Wage and Hour Division entered into two Federal-State agreements regarding registration under the Farm Labor Contractor Registration Act. The first such agreement was between the Department and the State of New Jersey. The second agreement, which affects about 40% of all registered contractors and employees in the nation, was effective October 1, 1977, between the Department and the State of Florida. Other States have expressed interest in similar agreements.

Enforcement of FLCRA requires a high degree of specialized knowledge of the many detailed aspects of the law. In addition, it is necessary that the law be enforced in a uniform manner nationwide to offer the protections provided to all farmworkers and users who deal with farm labor contractors. While some States have their own laws in this area, they vary widely.

Farm labor contractors who move in the migratory stream with their crews cover a wide geographic area which may include stops in several States. The Wage and Hour Division has developed methods of communications designed to permit transfer of information and tracing of contractor activities from one geographic area to another, at times involving several Regional Offices. Implementations of remedial actions, including legal sanctions, are facilitated by the inter-office communications made possible by a federally operated program The Division, with offices in over 350 locations nationwide, offers a uniform enforcement by compliance officers trained in the specifics of the Farm Labor Contractor Registration Act. For these reasons, we do not foresee delegation of the enforcement of the Act in the near future.

NO. 14

The Department's position on H.R. 7892, H.R. 8232, H.R. 8233, H.R. 8234, H.R. 8249, H.R. 8894, and H.R. 10053.

The Department's position on these proposed bills is being prepared and will be given as part of the Department's testimony on February 22, 1978.

U. S. DEPARTMENT OF LABOR,
EMPLOYMENT STANDARDS ADMINISTRATION,
WAGE AND HOUR DIVISION,
Washington, D.C., April 18, 1977.

This is in reply to your question asking whether it would be permissible to publish in your New Letter a copy of Wage and Hour Form 418, Farm Labor Civil Money Penalty Report.

This form is a work sheet for the assessment of civil money penalties under the Farm Labor Contractor Registration Act. As you know, Section 9 of the Act provides that a civil money penalty of not more than $1,000 may be assessed for each violation of the Act or any regulations promulgated under the Act. An assessment may be higher (subject to the statutory maximum) or lower than indicated in the list on the form in exercising this discretionary feature of the Act. In other words, there are no fixed amounts to be assessed as a matter of course for a particular violation. The assessment recommendations which is made is based on the nature of the violations in each particular case as discussed in detail in 29 CFR 40.65(b). These include the following factors:

(1) Previous history of violation or violations.

(2) The number of migrant workers affected by the violation or violations.

(3) The gravity of the violation or violations.

(4) Efforts made in good faith to comply with the Act.

(5) Explanation of person charged with the violation or violations.

(6) Assurances of future compliance, taking into account the public health, interest or safety.

(7) Financial gain on the part of the violator or financial losses to worker or workers.

The publication of this form (copy enclosed) should include the above statement as to its use.

Sincerely,

(S) Warren D. Landis
WARREN D. LANDIS,
Acting Administrator.

Farm labor contractor/farm labor contractor employee violations:

	Penalty
1. Failure to register:	
(a) Certificate 4(a)	[1] $1,000
(b) ID Card 4(b)	[1] 500
2. Failure to exhibit certificate 6(a)	50
3. Disclosure to workers 6(b)	100
4. Posting at work site 6(c)	50
5. Misrepresentation to workers 5(b)(2)	400
6. Failure to keep required records 6(e)	400
7. Record keeping incomplete or inaccurate 6(e)	200
8. Farm labor contractor records furnished to user 6(e)	100
9. Statement of amounts contractor received provided to worker 6(e)	100
10. Illegal alien workers (total may exceed $1,000) 6(f)	[2] 400
11. Proper money payments 6(g)	200
12. Worker purchases 6(h)	200
13. Transporting without certificate authorization 5(a)(4)	400
14. Operating vehicle used to transport workers 5(b)(8)	200
15. Vehicle safety 5(b)(8) and 5(b)(12)	400
16. Vehicle insurance 5(b)(5) and 5(a)(2)	1,000
17. Notification to Secretary of vehicle change 5(d)	50
18. Housing workers without certificate authorization 5(a)(4)	400
19. Housing safety and health (up to $1,000) 5(b)(12)	1,000
20. Posted housing conditions 6(d)	50
21. Notification to Secretary of housing change 5(d)	50
22. Knowingly made misrepresentations or false statements in application for a certificate or ID card 5(b)(1)	500
23. Certificate holder is not the real party in interest and real party has had certificate or ID card revoked, denied or does not presently qualify 5(b)(11)	1,000
24. Failure to abide by agreement with workers 5(b)(4)	400
25. Breach of agreement with user 5(b)(3)	400
26. Discrimination against workers testifying or exercising rights 13(a)	1,000
27. Engaging unregistered farm labor contractors 4(c)	[1] [2] 1,000
28. Hiring unregistered farm labor contractor employees 5(b)(10)	[1] [2] 300
29. Knowingly employing in any farm labor contractor activity a person who has taken any action that could disqualify the person from holding a certificate or ID card 5(b)(9)	[2] 1,000
Total assessed penalty	

Grower, processor, or other user violations:

30. Engaging unregistered farm labor contract 4(c)	[1] 1,000
31. Failure to keep required payroll records 14	400
32. Failure to keep complete and accurate payroll records 14	200
33. Failure to obtain and maintain contractor records 14	400
34. Failure to obtain complete contractor records 14	200
35. Discrimination against workers testifying or exercising rights (13a)	1,000
Total assessed penalty	-----

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[1] If the farm labor contractor or farm labor contractor employee has made application prior to beginning this investigation, subtract 50 percent.

[2] Each.

Mr. Andrews. Very well, then unless there is other business to attend to we will adjourn until 2 o'clock.

[Whereupon, at 12:30 p.m. the hearing recessed, to resume at 2 p.m. the same day.]

AFTERNOON SESSION

Mr. Andrews. Let us reconvene, if we may. If you would, sir, just start and would each of you give me your name and whomever you represent.

Mr. Ghiselin. My name is Clark M. Ghiselin, executive vice president of the Citrus Industrial Council, Lakeland, Fla.

Mr. ANDREWS. A fellow from my home town, Siler City, N.C., used to run the bank down there. He was Dwight Lamb.

Mr. GHISELIN. Yes, sir.

Mr. ANDREWS. Do you know him?

Mr. GHISELIN. Yes, sir.

Mr. SHAW. Roderick Shaw, general counsel, Citrus Industrial Council. I am in private practice in Tampa, Fla.

Mr. GORDON. Leon L. Gordon of Los Angeles, Calif. I am general counsel for the Agricultural Producers Labor Committee.

Mr. ANDREWS. What is that?

Mr. GORDON. Agricultural Producers Labor Committee is a trade association for the citrus and avocado industries in the States of California and Arizona.

Mr. ANDREWS. And your membership would be——

Mr. GORDON. Our membership constitutes approximately 92 percent of the citrus and avocado industries in those two States.

Mr. ANDREWS. All right.

Mr. WILLIAMS. I am Russell L. Williams, I am president of the Agricultural Producers Labor Committee.

Mr. ANDREWS. May I inquire? I guess what threw me, I don't usually see the words producers and labor in the same title.

Mr. WILLIAMS. You are interested in how that came about? Briefly, what happened back in the 1930's, was a group of producers got together to hire a man to come and lobby on what turned out to be the Labor Relations Act. It was labor. They formed a committee and called it Agricultural Producers Labor Committee.

Mr. ELLSWORTH. Perry Ellsworth, executive vice president, National Council of Agricultural Employers.

Mr. ANDREWS. All right.

Mr. FIELDS. Chuck Fields, C. H. Fields, American Farm Bureau Federation.

Mr. ANDREWS. I have heard of that before.

Have you established any order among yourselves?

Mr. ELLSWORTH. I think I am first man today, Congressman.

Mr. ANDREWS. In whatever order you gentlemen chose to proceed.

STATEMENT OF PERRY R. ELLSWORTH, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL WORKERS, WASHINGTON, D.C.

Mr. ELLSWORTH. Well, on behalf of the National Council of Agricultural Employers we appreciate very much this opportunity to be present today to state our views regarding the bills which are before this subcommittee, each of which would amend in one way or the other the Farm Labor Contractor Registration Act.

I would like to say at the outset that my association does not recommend or support changes in the Farm Labor Contractor Registration Act which would weaken the sanctions in the act to protect farmworkers from abuses by crew leaders, and I emphasize crew leaders.

While the act is titled the Farm Labor Contractor Registration Act, it was quite obviously, at least to our mind, the intent of Congress that its coverage apply to crew leaders.

Before going any further I would like to say that my comments are going to be of a general nature, and at the August 24 hearing which was held in Raleigh, N.C., the oversight hearing down there, I did submit a statement regarding the four lower numbered bills plus H.R. 8894, and I would like to have that testimony considered as part of the deliberations of the subcommittee when it considers this whole matter.

Mr. ANDREWS. Very well, thank you.

Mr. ELLSWORTH. Throughout the history of legislative action, leading to the amendments of which brought about Public Law 9518, every allegation made has been directed toward crew leaders. The term crew leader was defined by Congressman Ford during his colloquy on the House floor on May 7, 1974, as being, and I quote:

> Farm labor contractors or crew leaders are the middlemen who serve as bridges between the grower who owns the land and the workers who plant and harvest the crops. Crew leaders normally contract with the grower to supply workers, then they recruit workers and transport them to the work site.

During the same colloquy, Congressman Thompson of New Jersey said:

> The majority of the farm labor force is not hired directly by farmers. Instead, farm labor contractors, or crew leaders as they are called, recruit crews and transport them to the places where picking is done. The Farm Labor Contractor Registration Act of 1963 attempted to curb the exploitation of both the farmer and the migrant farm worker by the crew leader.

Congressman Lehman had this to say during the same discussion.

> H.R. 3442

that was the first of the bills

> will have a significant impact only on those crew leaders who are illegally and unconscionably exploiting the migrant work force.

Congressman Quie of Minnesota said during the same discussion:

> First, H.R. 13342 requires or mandates the Secretary of Labor to investigate and monitor the activities of crew leaders.

Report 93–1493, issued by the House Committee on Education and Labor, regarding H.R. 17474, had this to say about crew leaders, on page 4 of that report, and I quote:

> Most farm workers, however, are recruited, transported, housed, hired and directed by a single person—the farm labor contractor, known interchangeably as a crew leader in some areas.

And from page 5:

> Abuse of workers by the contractor or crew leader appears more the rule than the exception. In essence, the Act requires that all contractors or crew leaders be registered with the Secretary of Labor or upon a showing or moral and physical responsibility.

Now, in light of all of these quotes, it seems terribly inconsistent to NCAE that an act obviously directed at crew leaders has resulted in untold harassment of those who are by no stretch of the imagination crew leaders.

Even during this morning's hearing session, the Department of Labor people constantly referred to crews and crew leaders in their conversations when they started answering questions after the prepared statements.

There are two different categories of farm labor or employers, as I see it. In the first category are farmer producers, canners, ginners, packaging shed operators, nurserymen, agricultural labor cooperative, and other such enterprises which have local situs, are subject to State and Federal laws, and can be sued by either individual plaintiffs or government bodies. These enterprises are held responsible for the actions of their employees.

In the second category are crew leaders who have no local situs, and who, as the testimony has revealed, are the persons whom the Farm Labor Contractor Registration Act is designed to cover. The Congress has recognized the peculiar nature of crew leaders by including in the "Act the requirements that: (1) the Secretary of Labor must be designated as the agent to accept service of summons at any and all times during which such farm labor contractor has departed from the jurisdiction in which such action is commenced" (2) that persons issued a certification of registration shall provide the Secretary a notice of each and every address change within 10 days after such change; (3) that employers must engage only those crew leaders whose registration is in full force and effect; and (4) that employers of crew leaders must obtain from such crew leader and retain for inspection copies of payroll records prepared by such crew leaders.

Each and every one of about four requirements leads one to the inescapable conclusion that the Farm Labor Contract Registration Act is aimed at controlling abuses by, and I will put it in quote:

> Itinerant crew leaders—persons with no local work situs, persons whom an aggrieved employee would find it difficult if not impossible to sue.

If the purpose of the Farm Labor Contractor Registration Act is to control certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers, and the public generally, it would seem that the present act should be amended to make it do just that.

As presently worded, the act is permitted interpretation by the U.S. Department of Labor which has brought under the act persons who in NCAE's opinion had no intention of covering. NCAI agrees with those bills before this committee which would amend section 3(b)(2) of the act by deleting the word "personally." Absence of the word will not affect the application of the act to crew leaders. Absence of the word will not affect the livability of any farmer producers, canners, ginner, packaging shed operators, or nurserymen for abuses.

As one principle example of what happens under this sort of thing, we talk about personally as an example, that came to my attention just the other day.

I will use a hypothetical situation. Let us assume that I operate an orchard and I hire three or four workers to prune my trees during the off-season, and I own a pickup truck and I say to one of those workers, I have heard them personally, and I am exempt under the act—I say to one of those workers I have hired, Joe, you take the other three fellows in the truck and go down to the orchard and prune and then when noontime comes I drive them back, you, Joe, you drive the truck.

So one man drives my truck. He does this. If he does that, morning, back at noon, return at noon, back at night, according to the Department of Labor, he is driving that, he is transporting on more than an incidental basis and is, therefore, by definition, at least under the Department of Labor interpretation of it, a crew leader and should be registered. He is in violation of the act and I am in turn in violation of the act because I have hired an unregistered crew leader while in the beginning I thought I had personally recruited, and I rather thought transporting meant getting those workers to my farm, in the first place, and once there the ballgame ended or went according to more sane rules.

Numerous bona fide full-time employees of growers and other agricultural enterprises are required to register as farm labor contractors. One particular example stands out above all others, and I use this in Raleigh, but I would like to use it here again and explore it just further.

A friend of mine, general manager of a citrus cooperative called Riotex Citrus from McAllen, Tex. He one day took one of 39 registered crew leaders working for that cooperative, getting to my friend's personal car, driving him half a mile down the road to show him where he wanted that crew leader to work the next day, and he has been subject to a citation for violating the act because he was not registered, he was transporting and his car was not insured.

Now, in an opinion letter—incidentally that matter was discussed with the Wages and Hour Division here in Washington, and that particular individual was present at the time.

In subsequent opinion letter dated August 26 of last year, then Deputy Administrator Warren Landis of the Wages and Hour Division wrote,

> A field man employed by a shed such as described above,

this was in response to the letter that my friend had written telling about his situation,

> who transports farm labor contractors to inspect a grove or field in connection with the day-to-day work assignments must either be registered as a farm labor contractor with transportation authorized or be a holder of a valid farm labor contractor employee ID card working for a registered farm labor contractor who has transportation authorized.

This seems inconsistent in light of the House Report 93–1493 and Senate Report 93–1295, both of which stated:

> In addition, the exemption in section 3(B)(3) of the act has been revised to apply to any full-time or regular employee of any entity referred to in section (B) (1) or (2) if their covered activity is performed on no more than an incidental basis and is performed solely for such entity.
>
> While employment relationships vary, it is the committee's intent that for many and similar bona fide employees will not have to register as farm labor contractors if it can be shown, for example, that they are full-time and permanent employees of an employer who utilizes a limited portion of their time for activity as defined in section 3(b) of the act.

In spite of the above language spelled out clearly in each committee report, the Administrator of the Wage and Hour Division in a speech before the annual meeting of NCAE just this February 8th, stated:

> There are many kinds of participation in covered farm labor contractor activity referred to in section 3(B) by full-time or regular employees of

> farmers or other persons referred to in section 3(b)(1) or 3(b)(2). Engagement in such farm labor or contractor activities may be a principal or peripheral function as related to the employees overall duties. There may also be seasonal fluctuations. Yet such activities may be part of the employee's regular or assigned duties which are performed on a regular or recurring basis and, therefore, in my opinion make him subject to the act.

And we have gone round and round on this particular thing. What is more than an incidental basis as defined by the committee as compared to the Department of Labor's statement that if they do it on a recurring basis, even if it is only a matter of driving a truck half a mile in the morning and driving it back half a mile at night, this is where we think the amendment is needed.

Mr. Andrews. May I interrupt and ask such a basic question?

Mr. Ellsworth. Yes, sir.

Mr. Andrews. You mentioned the person in Texas who drove the farm worker down to a field and has been subpenaed for having transported that crew leader in a vehicle which was not insured. If I understand you correctly, among other charges——

Mr. Ellsworth. Well, he was cited, sir.

Mr. Andrews. Cited. What I am wondering, I don't know what the laws are in this regard in any of the States except my own, but I wonder if they aren't the same in at least most if not all States. In North Carolina you can't get a vehicle license unless insurance is in force on that vehicle. If you ride in it yourself you can't get a license for it without having insurance. I take it that is not the case in Texas, or there would have been insurance.

Mr. Ellsworth. I would have to defer to somebody who would know about Texas. My assumption would be that a private motor vehicle operator there has to have insurance, too, but I really can't answer that question.

Mr. Andrews. Maybe one of the attorneys or somebody could answer that. If not, let us try to find out. That is one of the things that keeps running through my mind on this issue.

Mr. Ellsworth. There is a fine line of difference, sir, I think, between the insurance required through this act to transport——

Mr. Andrews. I understand it might not have to be in an amount such as is required by this act and probably would not be that much in the case of most of us, but I thought each State had some minimal liability insurance requirement for all licensed vehicles. Is that not the case?

Mr. Gordon. I don't believe that is correct. I believe many States do not have any mandatory liability insurance for the registration of vehicles.

Mr. Andrews. All right, apparently that is the case in Texas, if this gentleman didn't have any insurance.

Mr. Ellsworth. I think the point was he didn't have the insurance mandated under the act.

Mr. Andrews. That could well be.

Mr. Ellsworth. It could have been $50,000 under it and still not had enough to satisfy the act.

Mr. Andrews. I understand.

Mr. Ellsworth. We think in light of these statements that section 3(b)(3) should be amended to delete on no more than an incidental basis. We have four reasons for saying that. The word solely for his employer, in that particular exemption, that exempt subsection, excludes from the exemption crew leaders who work for employers during a given year. If he works solely for his employer, that means working for one man, he cannot work for two or three, to gain that exemption, (2), no testimony has been developed to show that abuses were caused by foreman or other bona fide employers of farmers, producers, packinghouses and so on, (3) on no more than an incidental basis bears no rational relationship to abuses or opportunities for abuses which the act was designed to regulate and correct.

I have a rather long statement I was prepared to make here regarding farm labor cooperatives about agricultural labor cooperatives but I am going to skip that point except to say my association backs up fully and agrees fully with what will be said by other witnesses on that subject. The only point I would make is that when listening to some people one would get the opinion that an agricultural farm labor cooperative is all bad, that it commits its henious abuses, that it fold up its tent and steals away and farm labor cooperatives do not steal away, they are there under the law of the State and they stay there and I hold that in most cases, if not all cases, every agricultural labor cooperative in existence has enabled growers collectively to provide better housing, better food, better working conditions, and more work, on a steady basis than would be the case with individual growers if they tried to do it on their own.

Some of the bills before this subcommittee provide for exempting agricultural labor cooperatives and NCEA urges that approval by this subcommittee.

As defined in the act, the term migrant worker covers each and every agricultural worker, whether migrant or not, and as interpreted by the Department of Labor, almost any person who hires such workers, even though those persons may be local citizens who voluntarily appear and apply for work, who live in the local area, and who if conditions are not to their liking can instantly quit, is classed as a crew leader and must register unless specifically exempted.

Local workers, or walk-ons, as they are frequently called, can live right there, there is no middleman, no crew leader bridge involved, all matters are between the employer or, his bona fide full-time or regular employee and the worker. It is not unlikely any other business in this land where a man goes to work in a shop, a supermarket, or a restaurant, if he doesn't like it, he can utter that famous phrase and go out the door and walk off the job.

A bit of history may be applicable here, because in some instances this act, as many people have said, why all of this perturbence over this act, some of this stuff was in the act before it was amended.

But before the 1974 amendments, the act covered only those who for a fee, either for himself or on behalf of another person, recruits, solicits, hires, fires or transports 10 or more migrant workers, and any time in any calendar year for interstate agricultural employment.

The removal of the 10 or more and of the interstate provisions relating in slipping under cover of the act such as local individual workers who in CAE fields are not the persons for whom Congress intended coverage.

In view of the above, we are urging this subcommittee to amend the definition of migrant worker to make it truly reflective of those for whom the Congress is justifiably concerned, those who far from home find themselves at the mercy of unscrupulous crew leaders for the transportation, lodging meals and medical care, if needed.

In summary, NCEA holds that the Farm Labor Contractor Registration Act was originally enacted and subsequently amended to provide protection for migrant agricultural workers who are part of a crew headed by a crew leader who engaged in crew leader activities as a way to earn a living. The protection was designed to prevent abuses of such workers who long distances from their home are dependent on their crew leader for employment, transportation, housing, meals and medical services. The act was designed to control those irresponsible crew leaders who took advantage of their workers.

It was not designed to cover each and every worker and each and every employer of agricultural——

NCEA further holds that the registration requirement was designed to get a handle on crew leaders in order to be able to force them to meet the laws of the land and to act responsibly toward their crew members.

It was designed to place the Government squarely in support of workers who absent such support are unable to seek redress against their crew leaders.

At this point in time I think I will cease speaking and if you have questions now or later I will be happy to try to answer them.

[The statement of Mr. Ellsworth follows:]

STATEMENT PRESENTED BY PERRY R. ELLSWORTH, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURE EMPLOYEES

My name is Perry R. Ellsworth. I am privileged to serve as the Executive Vice President of the National Council of Agricultural Employers, a national organization with members in 39 states and the District of Columbia. The Council's membership is comprised of individual farmers, processors, canners, ginners, packing shed operators, nurserymen and others who hire agricultural labor and associations of such individuals and companies whose members hire agricultural labor. By conservative estimate, those represented by membership in the Council hire 75 percent of the agricultural labor employed in this country. I am appearing before this Subcommittee at the direction of the Council's Board of Directors.

Mr. Chairman, the National Council of Agricultural Employers deeply appreciates your invitation to present its views on proposed legislation to amend the Farm Labor Contractor Registration Act of 1963 as amended (Pub. L. 93–518).

NCAE fully supports legislation which will give protection to *migrant* agricultural workers who are recruited, solicited, hired, furnished or transported by a *third party* who does so *for a fee.*

NCAE was privileged to appear at a Farm Labor Contractor Registration Act oversight hearing conducted in Raleigh, North Carolina on August 24, 1977. The statement filed at that hearing went into considerable detail regarding numerous bills which were then before this Subcommittee. Rather than repeat what was said in that statement regarding specific bills, we ask that it be considered by this Subcommittee as part of the overall view of NCAE regarding the Farm Labor Contractor Registration Act and the need for amendments.

Throughout the history of legislative action leading to enactment of Pub. L. 93–518 which amended the Farm Labor Contractor Registration Act of 1963, nearly every word uttered, every thought expressed, and every allegation made was directed toward "crew leaders." The term "crew leaders" was defined by Congressman William D. Ford of Michigan who said, on the floor of the House, on May 7, 1974, during colloquy on HR 13342 (Congressional Record, May 7, 1974, page H 3646):

Farm labor contractors *or crew leaders* are the middlemen who serve as bridges between the grower who owns the land and the workers who plant and harvest the crops. Crew leaders normally contract with a grower to supply workers. Then they recruit workers and transport them to the work site. (Italics added.)

During the same colloquy, Congressman Thompson of New Jersey said (Congressional Record, May 7, 1974, page H 3648):

The majority of the farm labor force is not hired directly by farmers. Instead, farm labor contractors, *or crew leaders* as they are called, recruit crews and transport them to the places where the picking is done.* * * The Farm Labor Contractor Registration Act of 1963 attempted to curb the exploitation of both the farmer and the migrant farmworker by the *crew leader*. (Italics added.)

Congressman Lehman had this to say during the same discussion (Congressional Record, May 7, 1974, page H 3648):

HR 13342 will have a significant impact only on those *crew leaders* who are illegally and unconscionably exploiting the migrant work force. (Italics added.)

Congressman Landgrebe of Indiana said, on the same day (Congressional Record, May 7, 1974, page H 3649):

We would like to see all *crew leaders* registered * * * (Italics added.)

Congressman Quie of Minnesota had this to say during the same discussion on HR 13342 (Congressional Record, May 7, 1974, page H 3650):

First, HR 13342 requires or "mandates" the Secretary of Labor to investigate and monitor the activities of "*crew leaders*" (Italics added.)

Report 93–1493 issued by the House Committee on Education and Labor regarding HR 17474 had this to say about crew leaders:

Page 4: Most farmworkers, however, are recruited, transported, housed, hired and directed by a single person—the farm labor contractor, known interchangeably as a "*crew leader*" in some areas.

In addition to "recruiting" the work force, the farm labor contractor (*or* "*crew leader*") provides many other functions. (Italics added.)

Page 5: Abuse of workers by the contractor/*crew leader* appears more the rule than the exception. (Italics added.)

In essence, the act requires that all contractors *or* "*crew leaders*" be registered with the Secretary of Labor, upon showing of moral and fiscal responsibility. (Italics added.)

It seems terribly inconsistent to NCAE than an Act which is obviously directed at crew leaders has resulted in untold harassment of those who are by no stretch of the imagination crew leaders. An Act aimed at correcting abuses by itinerant and oft-times irresponsible crew leaders who mistreat migrant workers is one thing, but when that Act is interpreted to cover growers and others about whom not a single bad word has been uttered, there is need for a change in the Act.

There are two distinct categories of farm labor employers. In the first category are farmers, processors, canners, ginners, packing shed operators, nurserymen, agricultural labor cooperatives and other such enterprises which have local situs, are subject to state and Federal laws and can be sued by either individual plaintiffs or government bodies. These enterprises are held responsible for the actions of their employees.

In the second category are crew leaders who have no local situs and who, as testimony has revealed, are the persons whom the Farm Labor Contractor Registration Act is designed to cover. The Congress has recognized the peculiar nature of crew leaders by including in the Act the requirements that: (1) the Secretary of Labor must be designated as the agent to accept service of summons at any and all times during which such farm labor contractor has departed from the jurisdiction in which such action is commenced (Section 5(a)(5); (2) persons issued a certificate of registration shall provide the Secretary a notice of each and every address change within ten days after such change (Section 5(d)); (3) employers must engage only those crew leaders whose registration is in full force and effect (Section 4(c)), and (4) employers of crew leaders must obtain from such crew leaders and retain for inspection copies of payroll records prepared by such crew leaders (Section 14).

Each and every one of the above requirements leads one to the inescapable conclusion that the Farm Labor Contractor Registration Act is aimed at controlling abuses by "itinerant" crew leaders—persons with no local work situs—persons whom an aggrieved employee would find it difficult, if not impossible, to sue.

If the purpose of the Farm Labor Contractor Registration Act is to control "certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers, and the public generally" (Section 2, Pub. L. 93–518), it would seem that the present Act should be amended to make it do just that. As presently worded, the Act has permitted interpretations by the U.S. Department of Labor which have brought under the Act persons who, in NCAE's opinion, the Congress had no intention of covering.

These examples may serve to prove our point.

1. Section 3(b)(2) of the Act provides an exemption for any farmer, processor, canner, ginner, packing shed operator or nurseryman who *personally* engages in such activity for the purpose of supplying migrant workers solely for his own operation.

It has been NCAE's interpretation that the phrase "transporting for the purpose of supplying migrant workers" means the process of bringing workers to the work site. Once at the work site, the workers have been "supplied." Such is not the case, apparently, because, if a farmer *personally* recruits and hires workers, then asks one of those workers to drive the farmer's truck to take one or more other workers to a field or orchard, for example, the worker who drives the vehicle is held to be, by Labor Department definition, a farm labor contractor and must register, and that vehicle must be insured because the alleged farm labor contractor is "transporting," and the farmer is not *personally* transporting his workers to the field or orchard. How the transported worker would be more protected by having the farmer drive his own truck over the exact same route escapes us. In either event, the farmer has local situs and is suable.

NCAE agrees with those bills before this Subcommittee which would amend section 3(b)(2) of the Act by deleting the word "personally." Absence of the word will not affect the application of the Act to crew leaders. Absence of the word will not affect the liability of any farmer, processor, canner, ginner, packing shed operator or nurseryman for "abuses." The full-time or regular employee of any farmer, processor, canner, ginner, packing shed operator or nurseryman who recruits, solicits, hires, furnishes or transports migrant workers solely for his employer's operation is still responsible to his employer who has local situs and can be located readily for purposes of suit should need arise.

2. Numerous bona fide, full-time employees of growers and other agricultural enterprises are required to register as farm labor contractors even if they transport a single worker or workers from one location to another on the work site. One particular example stands out above all others. A citrus enterprise manager drove his personal vehicle to take a registered farm labor contractor to a grove to show that contractor where to work the next day. The manager was cited for violation of the Act. In an Opinion Letter dated August 26, 1977, then Deputy Administrator Warren D. Landis of the Wage and Hour Division wrote:

> A fieldman employed by a shed such as described above, who transports farm labor contractors to inspect a grove or field in connection with the day-to-day work assignments must either be registered as a farm labor contractor with transportation authorized or be a holder of a valid farm labor contractor employee ID card working for a registered farm labor contractor who has transportation authorized.

This seems inconsistent when viewed in the light of House Report 93–1493 (page 8) and Senate Report 93–1295 (page 7) both of which state:

> In addition, the exemption in section 3(b)(3) of the Act has been revised to apply to any full-time or regular employee of any entity referred to in section 3(b) (1) or (2) if their covered activity is performed on no more than an incidental basis and is performed solely for such entity. While employment relationships vary, it is the Committee's intent that foremen and similar bona fide employees will *not* have to register as Farm Labor Contractors if it can be shown, for example, that they are full-time and permanent employees of an

> employer who utilizes *a limited portion of their time* for activities as defined in section 3(b) of the Act. (Italics added.)

In spite of the above language spelled out clearly in each Committee Report, the Administrator of the Wage and Hour Division, in a speech before the Annual Meeting of NCAE on February 8 of this year stated:

> There are many kinds of participation in covered farm labor contractor activities referred to in section 3(b) by full-time or regular employees of farmers or other persons referred to in section 3(b)(1) or 3(b)(2). Engagement in such farm labor contractor activities may be a principal or peripheral function as related to the employee's overall duties. There may also be seasonal fluctuations. Yet such activities may be part of the employee's regular or assigned duties which are *performed on a regular or recurring basis* and therefore, in my opinion, make him subject to the Act. (Italics added.)

3. In various situations, a full-time or regular foreman or supervisor may, during the harvest season, hire "walk-ons" and put them to work. Hiring workers is but one small aspect of his total job opportunity. His main responsibility is to harvest the crop and deliver it to a packing shed, storage facility or processing plant. Even so, under current USDL interpretations of the Act, that foreman must register even though he utilizes only a limited portion of his time in hiring such workers.

Section 3(b)(3) should be amended to delete "on no more than an incidental basis," because: (1) The words "solely for his employer" exclude from the exemption crew leaders who work for employers during any given year. (2) No testimony has been developed to show that "abuses" were caused by foremen or bona fide employees of farmers, processors, packing houses. (3) "On no more than an incidental basis" bears no rational relationship to abuses or opportunities for abuses which the Act was designed to regulate and correct.

4. Farm labor cooperatives have been a part of the American agricultural scene for many years. Such cooperatives, established by individual growers, have historically proven their worth to growers and to workers. By pooling their resources, growers have provided better housing and services through their cooperatives than would be possible on an individual basis. Through their cooperatives, growers have been able to provide more work for workers by shifting them from grower to grower as need arises rather than having workers employed by one grower idle for short periods between harvest of different varieties of apples, for instance. Contrary to the views of some persons, such agricultural labor cooperatives are not fly-by-night organizations. They remain as business entities year-around. Some, especially in California, operate nearly 12 months out of the year. Such agricultural labor cooperatives have local situs and are suable. They are not itinerant. The manager remains with the cooperative from year to year. The agricultural labor cooperative is not a crew leader—a middle man who serves as a bridge between the grower who owns the land and the workers who plant and harvest the crops. The agricultural labor cooperative *is* the grower. It is owned lock, stock and barrel by growers. No fees are paid to anyone. The manager is a full-time or regular employee of the farmers who own the cooperative.

For some reason, in spite of the clear-cut nature of agricultural labor cooperatives, the U.S. Department of Labor has found them to be crew leaders or farm labor contractors under the Act. In his remarks before the NCAE Annual Meeting on February 8, 1978, Wage and Hour Administrator Vela stated:

> In the case of farm labor cooperatives, the question has been raised as to whether a fee is paid or promised where members are billed only for the cost of the services they receive. As you may know, if there is no fee there is no coverage under the Act since the definition of farm labor contractor in section 3(b) requires that there be a fee.
>
> It is the Department's position that a fee need not necessarily be in the form of cash but may consist of anything which will form the consideration for a contract. Also, a fee need not necessarily contemplate a profit. A fee includes any money or other valuable consideration paid or promised to be paid for services as a farm labor contractor, as for example, where growers reimburse a cooperative for the wages of the agricultural workers or for supplying such workers. We are presently involved in a number of court actions on the question of what constitutes a fee.

It is NCAE's view that Mr. Vela's reasoning is not valid. There is no contract involved. A grower does not contract for the services of something he owns. There is no fee paid to the agricultural labor cooperative. A grower does not pay a fee to an organization he owns. Reimbursement of a cooperative for wages paid to workers is not the payment of a fee. In fact, in at least one instance, the agricultural labor cooperative grower members pay their workers' wages direct.

It seems totally inconsistent for Congress, which has enacted this legislation to protect agricultural workers, to penalize agricultural labor cooperatives which have historically provided better housing and working conditions for workers.

Several of the bills before this Subcommittee provide for exempting agricultural labor cooperatives. NCAE urges favorable consideration thereof.

5. The Farm Labor Contractor Registration Act was enacted to control "certain irresponsible contractors for the services of migrant agricultural laborers." It was aimed at crew leaders—those individuals who are "a bridge between the (farm) operator and the worker." (S Report 93–1295, page). At no time in the written proceedings of the hearings on the House colloquy regarding this bill did anyone point the finger at a grower or other employer whose full-time or regular employee hired persons at the farm, plant or shed.

As defined in the Act, however, the term "migrant worker" covers each and every agricultural worker, whether migrant or not, and as interpreted by the Department of Labor, any person who hires such workers, even though those workers may be local citizens who voluntarily appear and apply for work, who live in the local area, and who, if conditions are not to their liking can instantly quit, is classed as a crew leader and must register unless specifically exempted.

Local workers or "walk-ons" as they are frequently called, are not "*abused*." If they are, they can leave right then. There is no "middle man"—no crew leader "bridge"—involved. All matters are between the employer, or his bona fide full-time or regular employee and the worker.

A bit of history may be applicable here. Before the 1974 amendments, the Act covered only "those who for a fee, either for himself or on behalf of another person recruits, solicits, hires, furnishes, or transports *ten or more* migrant workers (excluding members of his immediate family) at any time in any calendar year for *interstate* agricultural employment." (Italics added.) The removal of the "ten or more" and of the "interstate" provisions resulted in sweeping under coverage of the Act persons such as local, individual workers whom NCAE feels are not the persons for whom Congress intended coverage.

In view of the above, NCAE urges this Subcommittee to amend the definition of "migrant worker" to make it truly reflective of those for whom the Congress is justifiably concerned—those who, far from home, find themselves at the mercy of unscrupulous crew leaders for transportation, lodging, meals and medical care, if needed.

In summary, NCAE holds that the Farm Labor Contractor Registration Act was enacted originally and subsequently amended to provide protection for migrant agricultural workers who are part of a crew headed by a crew leader who engages in crew leader activities as a way to earn a living. The protection was designed to prevent abuses of such workers who, long distances from their homes, are dependent upon their crew leader for employment, transportation, housing, meals and medical services. The Act was designed to control those irresponsible crew leaders who took advantage of their workers. It was not designed to cover each and every worker and each and every employer of agricultural labor.

NCAE further holds that the registration requirement was designed to get a "handle" on crew leaders of migrant crews in order to be able to force them to meet the laws of the land and act responsibly toward their crew members. It was designed to place the government squarely in support of workers who, absent such support, are unable to seek redress against their crew leaders. NCAE applauds this effort.

On the other hand, NCAE holds that the wording of the amended Farm Labor Contractor Registration Act and the interpretations of the Act by the U.S. Department of Labor have resulted in coverage far beyond what Congress intended. There is no indication that Congress intended that the Act should cover established enterprises which hire agricultural labor and about which no charges have been made in hearings or on the floor of either House. There is no indication that Congress intended the Act to cover farmers, processors, canners, ginners, packing shed operators or nurserymen, all of whom have local situs and are subject to adequately enforced laws and regulations governing hiring, housing and compensation. NCAE does not believe that the Congress intended to cover the persons involved in the five situations listed above plus numerous other similar situations.

Department of Labor personnel have told NCAE that they must enforce the Act as written and cannot take into account the intent of Congress as expressed in committee reports and on the floor of Congress because the courts consider only the law.

In view of all the above, NCAE strongly urges this Subcommittee to carefully review the intent of Congress and to amend the Farm Labor Contractor Registration Act so that it clearly and explicitly accomplishes its purpose which, as NCAE sees it, is to protect *migrant* agricultural workers against the abuses of *crew leaders.*

Mr. ANDREWS. I enjoyed your testimony.

STATEMENT OF RUSSELL L. WILLIAMS, PRESIDENT, AGRICULTURAL PRODUCERS LABOR COMMITTEE, LOS ANGELES, CALIF., ACCOMPANIED BY LEON GORDON, GENERAL COUNSEL

Mr. WILLIAMS. I guess I am the next one. For the recorder, my name is Russell L. Williams, I am president of the Agricultural Producers Labor Committee. I have with me Leon L. Gordon, who is general counsel to that organization.

The Agricultural Producers Labor Committee is a nonprofit trade association representing approximately 90 to 95 percent of the citrus and avocado industries in California and Arizona. At the outset we wish to emphasize that we are in agreement with the purpose and policy of this law. We are in accord with the intent of Congress to correct abuses which have been inflicted upon agricultural employees and employers in the past and we support the effort to regulate the farm labor contractor, the body broker, the crew leader, who has been responsible, we believe, for these abuses.

We are before you seeking clarification of sections 3(b) (1), (2) and (3) exclusions and 3(c) definition and other areas in which specific problems have arisen.

We feel the difficulties which have arisen under this law stem from the 3(b) definition of a farm labor contractor, which is so broad as to encompass practically all agricultural employment.

Congress sought to narrow definition by writing into the act the 3(b) (1), (2) and (3) exclusions. However, as was pointed out this morning, as interpreted by the Department of Labor, these exclusions have been rendered virtually meaningless. The evils which I believe Congress sought to remedy or eradicate arose out of practices of certain requirements for contractors that did not arise out of the practice of other agricultural employers who presumably Congress intended to exclude from the application of the law under the 3(b) (1), (2) and (3) exclusions.

We submit therefore, that to remedy this problem 3(b) (1), (2) and (3) exclusions should be amended to make clear the intent of Congress.

Mr. Ellsworth, Mr. Shaw, Mr. Fields, and witnesses this morning have addressed themselves to several issues that we had intended to address ourselves to, and there is no sense in rehashing that all, just to make the point we do endorse and support Mr. Ellsworth's statement, the statement Mr. Shaw will give, and also the statement Mr. Fields will give.

We will limit our testimony to the question of the 3(b)(1), which is the question of nonprofit charitable organizations, and the 3(c) definition of what constitutes a fee.

Initially, we urge that section 3(b)(1) of the act be amended to provide an exclusion for nonprofit labor associations or cooperatives.

In the citrus and avocado industries in California and Arizona, harvesting and pruning labor is often provided by agricultural labor cooperative associations. These associations are nonprofit associations organized under the agricultural codes of these States. They are operated on a cooperative basis and they render services to their grower members in recruiting, housing, feeding, and transporting the agricultural workers employed by their grower members in harvesting citrus and avocado crops.

Most of these cooperatives have been in business for many years. Most operate permanent camps and in many cases they provide family type housing. They operate dining facilities and in some cases provide hot meals in the orchards. These camps furnish recreational facilities, television rooms, chapels, and sometimes counseling services and bilingual adult education. This housing and all these facilities are provided at cost, or below cost, to the agricultural workers.

Many of these cooperatives provide fringe benefits to the workers which include vacation pay, medical, hospital and life insurance, pension plans, and prior to the time it was mandated they provided, on a voluntary basis, unemployment insurance.

Although there are peaks and valleys in total employment in the citrus and avocado industries, harvesting and pruning of multiple citrus and avocado crops are carried on throughout the entire year, and the employees of any one of these cooperatives may enjoy almost permanent year-around employment. The pooling arrangement made possible by the cooperative provides employment from the time of the earliest picking until the time of the final pick of the season in any given area.

These cooperative associations operate on a nonprofit basis. They charge each of their grower members directly for the actual cost of the labor employed in the groves of that member, and they assess the member his proportionate share of the overhead of the cooperative, figured on a volume basis. Nothing is retained by the associations. They realize no profits, they make no distributions, and their books are zeroed out at the end of the year.

Hence, it is our contention that they receive no fee. These agricultural cooperatives are not labor contractors exploiting agricultural workers, nor are the agricultural workers employed by these cooperatives the migrant workers who need the protection which Congress has sought to provide.

For these reasons we submit that section 3(b)(1) should be amended to provide an exemption for these agricultural cooperatives as follows:

> (1) Any non-profit charitable organization, non-profit agricultural cooperative, as defined in section 3(i) hereof, public or nonprofit private educational institution, or similar organization;

Attached is a copy of a study of an agricultural cooperative which provides agricultural labor to citrus growers in Ventura County, Calif. This study shows the remarkable progress which has been made in improving the terms and conditions of agricultural employment and in providing stable year-around employment in the citrus industry—"Labor Management for seasonal Farm Workers, A Case Study," by Donald Rosedale and John Mamer, University of California, Information Series in Agricultural Economics, March 1974.

Special recognition has also been given to the unique position of the nonprofit cooperative which supplies agricultural labor, by Sue Eileen Hayes, working under a grant from the University of Texas, under the direction of now Secretary of Labor Ray Marshall—"Rationalizing Agricultural Labor Markets: The Case of Citrus," November 1977.

Concern has been expressed lest any such exclusion be used by farm labor contractors as a means of evading or avoiding registration under the act. We understand and appreciate this concern, but we believe the proposed amendment is so drafted as to prevent any attempt by a labor contractor to use the 3(b)(1) exclusion to avoid registration. A new section 3(i) could be added to define the term "agricultural cooperative" as follows:

> (i) As used herein, the term "agricultural cooperative" means a nonprofit corporation or agricultural cooperative organized and controlled by its members, all of whom are producers of agricultural products, and which renders services to such members on a nonprofit basis.

This definition would make clear the intent of Congress that only a nonprofit corporation which was organized and controlled by a group of farmers and which rendered services to the grower members of the cooperative on a nonprofit basis would come within the exclusion. This we submit would preclude any labor contractor from seeking to use this form of organization as a facade for the purpose of avoiding registration.

The intent of Congress could further be spelled out by a detailed statement in the subcommittee report explaining the intent of Congress, directing the writing of regulations, and setting forth the criteria to be used in judging whether or not a particular nonprofit association was to be exempt. Among the criteria which should be used and which should be detailed in the regulations are the history of the particular cooperative, the circumstances of its organization, the manner in which its finances are handled.

Such an inquiry would easily determine whether or not the organization was being operated strictly on a nonprofit basis, or whether excessive compensation was being funneled off the benefit of any individual.

Additionally, we propose that section 3(c), which defines the term "fee," be amended to read, (c) the term fees means any money or other valuable considerations in excess of the actual cost of providing such services paid or promised to be paid to a person for services as a farmer or contractor. The word "fee" as it appears in the definition of farm labor contractors in section 3(b) and the context with the congressional intent to regulate the body broker type of contractor was intended, we believe, to be profit or something in excess of the actual cost of providing services in question.

That terminates our testimony. Thank you for this opportunity to appear.

[The statement of Mr. Williams follows:]

STATEMENT OF RUSSELL WILLIAMS, PRESIDENT, AGRICULTURAL PRODUCERS LABOR COMMITTEE

To the honorable Ike Andrews, chairman: This statement is filed on behalf of Agricultural Producers Labor Committee in support of amendments to the Farm Labor Contractor Registration Act.

Agricultural Producers Labor Committee is an organization whose membership includes approximately 95 percent of the citrus and avocado industries in the state of California and Arizona.

At the outset we wish to emphasize the fact that we are in agreement with the purpose and policy of this law. We are in accord with the intent of Congress to correct the abuses which have been inflicted upon agricultural employees in the past, and we support the effort to regulate the farm labor contractor, the body broker, the crew pusher, who has been responsible for these abuses. We are not before you seeking substantive changes in the law, but rather clarification of the section 3(b) (1), (2), and (3) exclusions, and of other areas in which specific problems have arisen.

We feel the difficulties which have arisen under this law stem from the section 3(b) definition of a farm labor contractor, which is so broad as to encompass practically all agricultural employment. Congress sought to narrow the definition by writing into the Act the 3(b) (1), (2), and (3) exclusions. However, as interpreted by the Department of Labor, these exclusions have been rendered virtually meaningless. The evil which we believe Congress sought to remedy or to eradicate arose out of practices of certain farm labor contractors. They did not arise out of the practices of other agricultural employers who presumably Congress intended to exclude from the application of the law under section 3(b) (1), (2), and (3). We submit, therefore, that to remedy this problem the 3(b) (1), (2), and (3) exclusions should be amended to make clear the intent of Congress.

Specifically, we recommend the word "personally" be deleted from section 3(b)(2). As interpreted by the Department of Labor, the word "personally" means "in person", and since a corporation can act only through an agent, a corporation cannot come within the 3(b)(2) exclusion. We submit that this interpretation is in conflict with section 3(a) of the Act, which defines "person" as including a corporation. Moreover, in modern day agriculture many farmers have assumed the corporate form for doing business. Likewise, processing, canning, ginning, and packing shed operations require large amounts of capital and are ordinarily carried on in a corporate form of organization. To hold that the 3(b)(2) exclusion does not apply to a corporation in effect nullifies that exclusion and renders it meaningless, contrary to the intent of Congress. If the 3(b)(2) exclusion is to have any meaning or purpose, then it should be applicable to a corporation as well as to a sole proprietorship or a partnership. To make clear the intent of Congress, the word "personally" should be stricken.

We further submit that the language, "solely for his own operation", as it appears in section 3(b)(2) should be clarified by the addition of the language, "including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, or packed in or diverted from its own operation".

Throughout all agriculture many processors, canners, or packers, as a part of a single integrated operation, employ planting, cultivating, or harvesting labor which is used on the crops which are canned, ginned, or packed. The planting, cultivating or harvesting is in truth and in fact a part of the canning, ginning, or packing operation, and such activities are carried on by the processor, canner, or packer "for his own operation". Interpreted otherwise, the 3(b)(2) exclusion would have no meaning or purpose. If the language is to be interpreted as meaning activities carried on solely within the four walls of the processing, canning, or packing plant, the exclusion would have no purpose, since those employed in such processing, canning, or packing operations are not agricultural employees and are not covered by the law.

As thus amended, *section 3(b)(2)* would read as follows:

"(2) Any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation, *including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, or packed in or diverted from its own operation;*"

We urge that section 3(b)(3) be amended by deleting the words, "on no more than an incidental basis". This language as interpreted by the Department of Labor renders the exclusion so narrow as to render it meaningless. Most full-time or regular employees who engage in recruiting on behalf of their employers do so on more than an incidental basis, as this term is interpreted by the Department of Labor. The language in question was apparently put into the section for the purpose of preventing a farm labor contractor from seeking to avail himself of this exclusion. It was feared that this exclusion might provide a loophole for a farm labor contractor. However, if the employee of the entity referred to in section 3(b)(1) or section 3(b)(2) was a full-time or regular employee of the entity and if he engaged in this activity "solely for his employer", obviously he could not be a labor contractor. If he were a labor contractor, he would not be a "full-time or regular" employee of the entity in question, nor would he be engaged in this activity "solely for his employer". We submit that there is no loophole, and with the deletion suggested the exclusion would have meaning and purpose. As thus amended, *Section (3)(b)(3)* would read as follows:

"(3) any full-term or regular employee of any entity referred to in (1) or (2) above who engages in such activity solely for his employer. ~~on no more than an incidental basis;~~"

We propose that *section 3(c)*, which defines the term "fee", be amended to read:

"(c) The term 'fee' ~~includes~~ *means* any money or other valuable consideration *in excess of the actual cost of providing such services* paid or promised to be paid to a person for services as a farm labor contractor."

The word "fee" as it appears in the definition of farm labor contractor in section 3(b), and in context with the Congressional intent to regulate the "body broker" type of contractor, was intended to mean profit or something in excess of the actual cost of providing the services in question.

We urge that a new *section 3(h)* be added for the purpose of defining the term "transport" as follows:

"(h) The term 'transport' means to own or to control, either directly or indirectly, the vehicle or conveyance in which migrants are transported."

A farm labor contractor who transports workers is required to secure proper liability insurance, and for this reason we believe the term "transport" should be defined. Liability on the part of the person doing the transporting should be limited to a situation where he actually controls, directly or indirectly, the vehicle or the conveyance used for the transportation. An employer should not be subjected to liability or be required to provide insurance in the case where he does nothing more than provide a travel allowance, nor should he be liable in the case where transportation is provided by some public transportation agency. .

Finally, we urge that section 3(b)(1) of the Act be amended to provide an exclusion for the nonprofit labor association or cooperative.

In the citrus and avocado industries in California and Arizona, harvesting and pruning labor is often provided by agricultural labor cooperative associations. These associations are nonprofit associations organized under the agricultural codes of these states. They are operated on a cooperative basis and they render services to their grower members in recruiting, housing, feeding, and transporting the agricultural workers employed by their grower members in harvesting citrus and avocado crops.

Most of these cooperatives have been in business for many years. Most operate permanent camps and in many cases they provide family type housing. They operate dining facilities and in some cases provide hot meals in the orchards. These camps furnish recreational facilities, television rooms, chapels, and sometimes counseling services and bilingual adult education. This housing and all these facilities are provided at cost, or below cost, to the agricultural workers.

Many of these cooperatives provide fringe benefits to the workers which include vacation pay, medical, hospital and life insurance, pension plans, and prior to the time it was mandated they provided, on a voluntary basis, unemployment insurance.

Although there are peaks and valleys in total employment in the citrus and avocado industries, harvesting and pruning of multiple citrus and avocado crops are carried on throughout the entire year, and the employees of any one of these cooperatives may enjoy almost permanent year-around employment. The pooling arrangement made possible by the cooperative provides employment from the time of the earliest picking until the time of the final pick of the season in any given area.

These cooperative associations operate on a nonprofit basis. They charge each of their grower members directly for the actual cost of the labor employed in the groves of that member, and they assess the member his proportionate share of the overhead of the cooperative, figured on a volume basis. Nothing is retained by the associations. They realize no profits, they make no distributions, and their books are zeroed out at the end of the year. Hence, it is our contention that they receive no fee. These agricultural cooperatives are not labor contractors exploiting agricultural workers, nor are the agricultural workers employed by these cooperatives the migrant workers who need the protection which Congress has sought to provide.

For these reasons we submit that *section (3)(b)(1)* should be amended to provide an exemption for these agricultural cooperatives, as follows:

"(1) any nonprofit charitable organization, *nonprofit agricultural cooperative, as defined in section 3(i) hereof*, public or nonprofit private educational institution, or similar organization;"

Attached is a copy of a study of an agricultural cooperative which provides agricultural labor to citrus growers in Ventura County, California. This study shows the remarkable progress which has been made in improving the terms and conditions of agricultural employment and in providing stable year-around employment in the citrus industry ("Labor Management for Seasonal Workers, A Case Study", by Donald Rosedale and John Mamer, University of California, Information Series in Agricultural Economics, March 1974).

Special recognition has also been given to the unique position of the nonprofit cooperative which supplies agricultural labor, by Sue Eileen Hayes, working under a grant from the University of Texas, under the direction of now Secretary of Labor Ray Marshall ("Rationalizing Agricultural Labor Markets: The Case of Citrus", November 1977).

Concern has been expressed lest any such exclusion be used by farm labor contractors as a means of evading or avoiding registration under the Act. We understand and appreciate this concern, but we believe the proposed amendment is so drafted as to prevent any attempt by a labor contractor to use the 3(b)(1) exclusion to avoid registration. A new *section 3(i)* could be added to define the term "agricultural cooperative" as follows:

"(i) As used herein, the term 'agricultural cooperative' means a nonprofit corporation or agricultural cooperative organized and controlled by its members, all of whom are producers of agricultural products, and which renders services to such members on a nonprofit basis."

This definition would make clear the intent of Congress that only a nonprofit corporation which was organized and controlled by a group of farmers and which rendered services to the grower members of the cooperative on a nonprofit basis would come within the exclusion. This we submit would preclude any labor contractor from seeking to use this form of organization as a facade for the purpose of avoiding registration.

The intent of Congress could further be spelled out by a detailed statement in the Subcommittee Report explaining the intent of Congress, directing the writing of regulations, and setting forth the criteria to be used in judging whether or not a particular nonprofit association was to be exempt. Among the criteria which should be used and which should be detailed in the regulations are the history of the particular cooperative, the circumstances of its organization, the manner in which it is controlled, and finally, the manner in which its finances are handled. Such an inquiry would easily determine whether or not the organization was being operated strictly on a nonprofit basis, or whether excessive compensation was being funneled off for the benefit of any individual. We submit that the following language would be appropriate as a *statement of the intent of Congress* in enacting the legislation:

"In certain parts of the United States harvesting labor is provided by agricultural cooperatives. These cooperatives are organized and controlled by their grower members and they render services to these members on a strictly nonprofit basis. These farm labor cooperatives make possible a pooling arrangement of agricultural labor which covers several varieties of the same crop or multiple crops of a number of grower members, and provides employment for much longer periods of time than would otherwise be possible. These agricultural cooperatives have a fixed situs and they provide good terms and conditions of employment and stability, as well as many benefits seldom provided to agricultural workers. These cooperatives are not the body brokers or middlemen Congress seeks to regulate. It is the intent of Congress to give recognition to these facts and to exclude these cooperatives from the definition of 'farm labor contractor'.

"However, Congress is concerned lest such an exemption be used by the traditional farm labor contractor as a means of avoiding registration under the Act. It is therefore contemplated that the Department of Labor will draft regulations setting forth criteria on the basis of which it can be determined whether the labor cooperative is a bona fide organization, or whether it is being used by a labor contractor to avoid registration under the Act. The criteria to be used for this purpose should include the following: the past history of the labor cooperative, the circumstances of its organization, and the manner in which it is controlled. Also to be considered is the manner in which the manager of the cooperative is compensated and whether or not his compensation is excessive, indicating that he is making use of the cooperative for his individual profit."

Thank you for this opportunity to present our views.

Mr. ANDREWS. Mr. Williams, as you described the cooperative in which you are particularly interested, and others in your area, I wonder what portion of the act is exceedingly objectionable? Why would a cooperative not be able to comply with the act, without any particular difficulty?

Mr. WILLIAMS. If I may, Mr. Chairman, I will ask Mr. Gordon to reply to that.

Mr. GORDON. Mr. Chairman, they certainly can comply and they do comply and during the entire course of the history of these organizations they have complied, I think, by and large with all of the present requirements of the act.

Mr. ANDREWS. That is what I was assuming.

Mr. GORDON. However, the act is extremely burdensome from the standpoint of the amount of paperwork required, also considered from the fact that it is required that they take their employees, require them to be fingerprinted. Many of these employees do not understand the reasons why they have to be sent down to the county jail and have their fingerprints taken and registered. It is extremely difficult to accomplish this. It is burdensome from the standpoint of the cost, it is also burdensome from the standpoint of the connotation that is attached to the term labor contractor, and it is difficult for these people, the people who sponsor these nonprofit associations, to understand why they are now included in the same category as the infamous farm labor contractor who has been guilty of all of these abuses.

Mr. WILLIAMS. If I may expand, let me give you one example. The report I referred to earlier, the Mamer report, issued in 1974, involving a study of coastal growers in the Ventura Plains, Oxard Plaines of California, that particular cooperative had some, I would guess, in the neighborhood of 150 to 200 perhaps more growers. The employees worked for a multitude of growers over a period of a season. Just the requirements under section 14(6)(c) and 14 became extremely burdensome in the one issue, the question of the inspection of all the buses. That has to be done under California law at any rate, but that is just one more additional burden because they have to inspect them for California law and also under the FLCRA requirement.

Mr. ANDREWS. The gentleman from the Department of Labor this morning told us that that wasn't the case.

Mr. WILLIAMS. Well, the gentleman from the Department of Labor was mistaken, to be very blunt.

Mr. ANDREWS. Were you here when he made the statement?

Mr. WILLIAMS. Yes, we were. We also were here when he made statements regarding the nonregistration of cooperatives. We will be happy to respond to that if you wish, and the question of inadequate insurance.

Mr. Gordon mentioned briefly, and I can give you a specific example involving the fingerprint requirement. In Yuma a number of the people who would be required to register as either contractor employes or contractors themselves are not fluent in English. As a matter of fact, in many situations they are not bilingual at all. Initially this has been changed at some considerable expense to the employers in that area. These individuals had to go down to the county jail, down into the cell block, which is the only place they had enough room, in order to be fingerprinted. They didn't understand as a group which if I work for an agricultural employer and my friend works for the school district, doing essentially the same type of work, why I have to go down and be fingerprinted and why I have to have a physical and why I have to do this annually and he doesn't. I mean we can get into all kinds of examples where the employees themselves object to this and it creates problems for us as employers, which I don't think really the Congress intended when they put this law together.

We understand and agree the intent of Congress to register the middleman, the body broker, the example that was spelled out this morning in Florida. We have no problems with that. We feel that is clearly needed but when we get into a situation where we have had these cooperatives in a situation up 30 years, they have assets that amount to into the millions of dollars, they carry insurance, pension programs, they have to go out of their way really to provide excellent terms and conditions of employment, then to be branded as a contractor and to have these additional, just like I said a moment ago, the recordkeeping requirements alone, imposed upon them, we naturally object.

Mr. ANDREWS. Well, I don't know, sometimes drafting legislation is quite difficult. It is very difficult to know, as somebody was saying this morning, who are the good people and who are the bad people? We might know in our minds, and we conjure up images of each other. How you draft legislation to define who is who, where you move one way or the other, is exceedingly difficult, and it just occurred to me that I don't know much about cooperatives. As far as we know in North Carolina we have none, or very few. I don't know how you can come up with language that keeps the coop from being a middle person. If you say here is an entity, a person or a coop, or whatever, who is the typical crew leader, meaning he is somebody who takes people into his employment and in turn he puts them here or there to work for a third person, you might say that is what you are doing, as I understand it, and you say we do it honorably, and, therefore we shouldn't come under the act and he who doesn't do it honorably should.

Mr. WILLIAMS. Mr. Chairman, if I might, I will ask Mr. Gordon to respond to your specific question.

Let me make one point, if I may. A farmer who does it personally for his own operations is exempt. A coop, as I see it, is composed of farmers grouping together, hiring a manager, and doing it for their own operations. Now that is very simplistic but it is pretty difficult to explain to a farmer when he is really in these situations, and I understand your concern, and the confusion that exists regarding this—it is pretty hard to explain to a man why he can do something by himself and be exempted but if he goes together with another group of people trying to provide protection and employment opportunities to a group of workers then the organization they form becomes a contractor.

Mr. GORDON. May I respond further to that?

Mr. ANDREWS. Yes. Isn't in fact the organization a contractor, don't you have a contract between——

Mr. GORDON. No.

Mr. ANDREWS [continuing]. Between the organization? You have to. You may not have it in writing but you have one, in my opinion. You have to.

Mr. GORDON. This nonprofit association is the employer of these agricultural employees. They assume all of the obligations of the employer-employee relationship. They provide a package of benefits in many cases, and in many cases, and in the case of coastal growers here, which we have mentioned in this study, that package of benefits is rather extensive.

Now, I think that we can write into the law and adequate definition that would draw a clear distinction between that type of entity and the crew pusher who in truth and in fact is a middleman. The association that we are talking about is not a middleman, it employs these people and engaged in this activity.

Mr. ANDREWS. Isn't that what the crew leader does, he employs them?

Mr. GORDON. In many cases, in most cases he is the man who just recruits them and makes them available and hired them or transports them or carries on some such activity as that.

Mr. ANDREWS. I don't mean to sound argumentative because I am inclined to think that some relief may be justified. A crew leader of the typical type we referred to does have some farmers in Florida and Georgia and in South Carolina and North Carolina, they move on up, essentially each year working for the same farmer.

Now, you say to try to define that middle person as being a cooperative that is exempt, why couldn't that crew leader just get a mimeographed letter and send it to the farmers for whom he is going to provide labor next year, just as he did last year, and say in an unscrupulous manner last year, so this year he writes all the farmers and say you sign this and mail it back to me. What they are signing is we hereby declare ourselves to be members of a new association and we call ourselves an association and we will employ this crew leader as our employee of our association for the purpose of recruiting and providing farm labor or whatever.

Mr. GORDON. In the State of California, I know of no case where a farm labor contractor has ever attempted to use the facade of a nonprofit labor association in order to——

Mr. ANDREWS. They are not exempt. If they are made exempt there is a further inducement for somebody to do that, it seems to me.

Mr. WILLIAMS. Under California law, California has a contractor registration act, it has had for many years. A coop of the type we are defining is exempt and has been ever since the act was put into law.

Mr. FIELDS. Let me respond to your question here. I think that it is very easy to delineate between the two because we have in each State specific statutes under which a cooperative has to be incorporated, it has to meet certain standards under State laws. There are Federal laws. We make a reference in the bill to State laws under which they can be defined as a cooperative, legitimate cooperative. There is no way that a bodybroker or labor contractor can meet the standards of those laws, absolutely no way.

Mr. GORDON. In the State of California, in order to be exempt, in order to register or be incorporated——

Mr. ANDREWS. It doesn't help us much if California has some such standards but x numbers of other States don't.

Mr. GORDON. I think most States have laws under which nonprofit associations are incorporated.

Mr. FIELDS. Every State has a nonprofit or cooperative incorporation statute, every State in the Union.

Mr. ANDREWS. So if we had language such as you gentlemen propose you would have to be within it in order to qualify for this exemption?

Mr. FIELDS. That is right, that is what we are going to propose.

Mr. ANDREWS. Such association must be incorporated in one of the States.

Mr. FIELDS. Either one of the State statutes or under the Federal statute that sets standards, to meet the Federal statute, one or the other.

Mr. ANDREWS. All right, excuse me.

Mr. SHAW. Could I comment on that question, Mr. Chairman?

Mr. ANDREWS. Yes.

Mr. SHAW. We have no labor associations in Florida but obviously that is an area in which other States might be interested in pursuing for one reason or another sometime in the future.

If the exemption is provided, I am certain the Congress will want to make certain that it does not provide a loophole whereby a crew leader who is simply a crew leader, can go out and find a lawyer who will form an agricultural co-op and then take the position I am now an agriculture co-op, join up a few members like some of these clubs you join for the evening, and like other clubs I don't mean other kinds, I hope you understand that, and escape through a loophole, but labor associations can be defined in this act in a way that will preclude quicky joinder and quicky getting out of members in a way that will eliminate a loophole, such as is done in the Ireland bill, which is H.R. 10631, which provides that the co-op in order to be within the exemption proposed must have members all of whom are farmers and most of which farmers continue as members year after year.

Well, if the farmers couldn't as members year after year, obviously that is a loophole through which crew leaders cannot escape.

The second point I would like to make to you, sir, is that this act is not, as I understand it, intended to go out and get all middlemen per se. This act is not designed to grab middlemen just because they are middlemen. It is pointed to certain middlemen, the crew leader-type middleman, not because he was crew leader, not because he was middleman, but rather because of some very dramatic abuses, such as the kind that Mr. Elisburg testified about this morning, on which the TRO was issued recently in Florida.

There is a kind of crew leader this act is designed to go after, those kinds of abuses, and there simply is not any evidence yet that I know of that these labor association legitimate ones, which could come within the Ireland type of definition, are guilty of those kinds of abuses.

Typically they will not only have liability insurance of the basic underlying kind but they will typically have an excessive liability limit that may take them up to $5 or $10 million in coverage.

I am sure Mr. Gordon will provide you with some detail on that after the hearing record closes. He indicated to me he intended to. I don't think the mere fact is one per se is a middleman necessarily makes it follow this is what the act is designed to correct.

Mr. ANDREWS. One reason I was asking the questions that I was, I had heretofore primarily heard objections to certain parts of the act from people who contended that it was unreasonable that they should be required to comply or come under this act because they were really small and they didn't have Xerox machines or so forth. In other words, a typically small farmer who says I don't object to what you intended to do but the cost of buying the machines is high and I don't have a secretary or people who know how to fill out these forms.

It just occurred to me that an association of really prosperous farmers pooling their resources together and having, therefore, fringe benefits, and retirement plans, and so forth surely does have office equipment and secretaries and so forth to the end that I had assumed that complying with the act would not constitute any great burden for such persons or entities or organization.

Mr. Williams. In one situation, while it wasn't directly as a result of this, Mr. Elisburg referred to the lawsuits in California this morning which Mr. Gordon has defended for us. One of those associations, *Elk Committee* v. *Growers* has dissolved, particularly as a result of some of the requirements that have been imposed by this act.

As a matter of fact, that organization is now a labor contractor. They have dissolved the corporation and an individual has taken over the assets and he operates it as a labor contractor, which we think is completely contrary to what Congress was trying to take care of in this particular situation.

Mr. Andrews. It would seem so. Again, do you know what it is about the act that caused that company to go out of business?

Mr. Williams. Not specifically. The cost. A law doesn't operate in a vacuum. This in addition to a number of other things that have occurred just got to the point where they decided they threw in the towel and said why should we bother and gave up.

Mr. Andrews. We might inquire as to how many co-ops of the type you are describing are in California, and how many workers do you suppose we are talking about?

Mr. Gordon. In all, in the State of California I would say there are 30 to 40 cooperatives of the kind we are talking about and they provide agricultural labor to a very sizable part of the citrus and avocado industry. I wouldn't venture a guess as to what the percentage is but it's a very substantial part of the two industries.

Mr. Andrews. Do most of the co-ops have employees running into the hundreds?

Mr. Gordon. Thousands, yes, unquestionably into the thousands.

Mr. Williams. As a total.

Mr. Andrews. You may be talking about 100,000 workers?

Mr. Gordon. Perhaps not that many.

Mr. Williams. You hate to even venture a guess, you find out you are wrong later on. It would be several thousands.

Mr. Andrews. Well, if they have 1,000 or more each, I believe you say?

Mr. Williams. No.

Mr. Gordon. They wouldn't have as many as 1,000 except one or two of the very largest.

Mr. Ellsworth. You asked the question about the number of employees. You meant the number of workers, not necessarily staff?

Mr. Gordon. Yes, sir.

Mr. Fields. One other thing, this is not only in California, it's widespread that we have these labor—New Jersey, Virginia, Massachusetts, all over the country we have these. It's not just in California.

Mr. Williams. All we can speak to are those cooperatives in the California citrus and avocado industry. We are aware there are a number of others throughout the United States.

Mr. Andrews. Are there any in North Carolina, so far as you know?

Mr. Fields. I don't know for a fact.

Mr. Ellsworth. Yes, there is one that would come under the act very clearly, a large apple-packing cooperative who has started up in Hendersonville, just getting underway and building storage. This operation is co-op owned by the growers, purely and simply. It's not strictly an agricultural labor co-op in the sense in which we are talking about.

All right, did either of you gentlemen care to make a further statement?

Mr. SHAW. Yes, sir.

Mr. ANDREWS. Mr. Shaw.

STATEMENT OF RODERICK K. SHAW, JR., GENERAL COUNSEL, CITRUS INDUSTRY COUNCIL, LAKELAND, FLA.

Mr. SHAW. Thank you, Mr. Andrews.

With me is Mr. Clark M. Ghiselin, executive vice president of the Citrus Council.

We greatly appreciate being granted the opportunity to present our views to the subcommittee regarding the bills introduced by Congressmen Sarasin, McFall, Ireland, and other legislation. We fully support the objective of the act, which we understand to be to protect migrant farmworkers from certain specific abuses by crew leaders.

The purpose of our testimony today is to urge the adoption of several technical clarifying amendments which are designed to refine the application of the act so as to deal very effectively with the substantial areas of abuse which have been found to exist while at the same time avoiding unnecessary regulation which is of no benefit whatsoever to farmworkers.

Our first suggestion, and I will deal with only two of the several amendments, because the others will be covered by other gentlemen here—our first suggestion deals with section 3(b)(2) of the act, which we suggest be amended in the manner proposed in the Sarasin, McFall, and Ireland bills.

Section 3(b)(2) of the act is a provision that sets forth the exclusion that is applicable to farmers, whether small or large, processors, canners, ginners, packinghouses, and nursery.

Now, attached to our written statement is a detailed footnote of the legislative history of how that word came to be left in the act.

During the 1974 amendments. I won't pursue that here. I am sure the chairman is already familiar with that. It's clear, however, from the legislative history, first of all, that the word "personally" was used in the October 1, 1974, Senate committee version of the amendments to distinguish the direct hiring of workers as employees of the farmer or processors from the indirect hiring through crew leaders rather than to distinguish individually from corporately.

Second, the decision of a farmer or processor as to whether to incorporate or not to incorporate has no rational relationship to any of the potential abuses the act is designed to correct.

Third, a farmer or processor does not merely by incorporating thereby becoming the kind of middleman contractor which the Congress intended to regulate.

And last, the word "personally," was retained in the act during the 1974 amendments solely through inadvertent error. Moreover, if we interpret "personally" to mean unincorporated, we render the word "processors" and "canner" meaningless where they appear in the language of the act.

Mr. ANDREWS. How is that again?

Mr. Shaw. Since if we interpret the word "personally," in the second line of 3(b)(2) to mean unincorporated, we render the word "processors" and "canners" in the first line of 3(b)(2) meaningless since most, if not all processors and canners are corporations. We all know that.

Now we find it very difficult to believe that the Congress would have gone to all the trouble of providing an explicit exclusion for processors and canners by the use of those two words in the first line of 3(b)(2) only to nullify them on the second line by this ambiguous word "personally."

Accordingly, we urge that the word "personally" be deleted for the four reasons I mentioned.

Mr. Andrews. I would assume most ginners are also incorporated.

Mr. Shaw. I would assume so. Most being from the cotton area it was not clear to me there might not be some individually owned ones.

Mr. Andrews. There practically aren't any any more. Such few, I assume, are probably incorporated.

Mr. Shaw. Yes, sir. The only one I know personally died a number of years ago.

I assume you know the semantic use of the word "personally" in the last sentence.

The next clarification we would urge relates to the qualification which is found in that same section 3(b)(2), which was placed in there to eliminate loopholes.

Now, it's our understanding that the qualifying words solely for his own operation were inserted by the Congress in section 3(b)(2) for the purpose of eliminating a loophole which would exist if a middleman contractor were able to take advantage of the farmer exclusion merely by going down and buying or leasing a farm and then taking the position that because I am a farmer, therefore, I am exempt.

So, that exclusion was placed in there so that the farmer exclusion will not be available to a crew leader who merely does that in incidentally, whose primary job is the crew leading activity.

Unfortunately, the Department of Labor is interpreting that qualification in a much more restrictive manner.

In a suit in California, Paramount Citrus Association, which has not yet been decided, the Department of Labor has contended that a packing shed operator should be treated as a middleman contractor and required to register, despite the fact that all of the fruits, all of the fruits harvested by the employees of the packing shed operator harvesting crew were packed by the packing shed in its own packing operator in its own packing shed.

Now we don't agree with that. We don't think Congress intended that, and we urge that those areas of ambiguity be resolved in a manner consistent with the objectives of the act with respect to the creation of abuses and not simply expanding coverage, and that that be done in the manner set forth in the bills introduced by Congressman Sarasin, McFall, and Ireland.

Now, there may be other bills that do it in a satisfactory manner that I have overlooked, Mr. Chairman.

Now, if the exclusion is so limited, as those bills provide, and the manner in which they are, they deal with that, is set forth at the bottom of page 12 of the new language underlined—if it's so limited, the potential loophole will have been eliminated, the contractor who seeks to avail himself of the 3(b)(2) exemption merely by owning or operating a farm will discover that under this amendment he must also stop performing contracting services for other farmers, thus a loophole will have been eliminated and the intent of Congress will be fully satisfied, and if there is any conceivable defect in those amendments we want very much to work with the committee and staff in solving the problem to make certain we are not opening any loophole whatsoever. That is not our intent.

Now, the proposed amendment will make it clear that if the workers are employees of a farm and are engaged in planning, cultivating, or harvesting crops solely on a farm operated by that farmer, then that farmer will come within the terms of the exclusion without regard to passage of title in litigation.

Recently the Department of Labor has put a good deal of store on where title was at the time harvesting occurred. That is totally irrelevant to the abuses the act is designed to cope with. It can't conceivably make any difference to the farmworkers who has title to the crop they are picking at the time they pick it. That can't conceivably have any relationship to the potential abuses that might occur, and in fact does not.

Similarly, that exclusion will make it clear that if the workers are employees of a processor and are engaged in harvesting crops which are ultimately processed solely in that processing plant, then that processor will also come within the terms of the exclusion.

Last, it will also make it clear that if a packinghouse operator, if the employees of a packinghouse are engaged in harvesting crops which are ultimately packed solely at that packinghouse, or diverted solely from that packinghouse, then that packer will also come within the terms of the exclusion.

Now, there was some misunderstanding this morning in the Department's testimony about the application of the word diversion as it appears in those amendments. The term diversion is limited in its application to packing houses. It doesn't relate to the activities of farmers, processors or ginners, only to packinghouses.

Let me explain why it is in there.

The term "diverted from" was placed in those proposed amendments because of the fact that at harvest time it's often discovered that all or a part of a crop initially intended for fresh packing and shipment in fresh form is not well suited for that because of external blemishes and is instead best suited for processing.

Under those circumstances, that crop or the portion thereof which is best suited for processing must be diverted from the packing shed to the processing plant.

Now, you don't have to do it that way. There is another way of doing it. That is to send out two harvest crews to the same field to harvest the same crop, sending the unblemished part to the packinghouse while the other crew sends the blemished part to the processing shed. That is sheer economic waste and has no rational relationship to the protection of the workers.

Mr. Andrews. I don't know what you mean when you say divert them to the processors. Would that be orange juice or something?

Mr. Shaw. Yes, sir. For example, that would be a good example. Tomatoes might be another one. You grew tomatoes, to ship to New

York for the produce market and discovered that the crop really for some reason or another wasn't going to be well suited for fresh shipment, so you divert it to the tomato canning plant.

Mr. ANDREWS. And make catsup out of it?

Mr. SHAW. Yes, sir, or canned whatever. There are all sorts of good canned tomato products, as Sheila Bamburger will testify.

Mr. FIELDS. The skin might not look too good. The skin gets taken off anyway.

Mr. SHAW. Well, now, without going further on that, the next clarifying amendment we would suggest relates to the section of the act which is 3(b)(3).

Now, that section provides an exclusion for employees, certain employees, not all employees, but certain employees of farmers, producers, and other agricultural employees listed in sections 3(b)(1) and 3(b)(2).

Now, the act contains some qualifications which were intended by the Congress to assure that a crew leader would not be able to come under this employee exemption merely by getting himself hired by a farmer or processor, and obviously that is a potential loophole that needed to be eliminated.

Accordingly, the employee exclusion was subjected to certain qualifications, and properly so, but what we need to do now is to refine those qualifications so that they effectively eliminate the loophole while at the same time make sure they are not broadened so much as to produce absurd results that have no relationship to protecting the workers.

Recently several packinghouses in Florida were told that every one from the President on down was deemed to be a farm labor contractor and must register, and they were told to do so and a couple capitulated and sent down the whole executive staff, each of whom registered as contractors. I think that is patently absurd. It happened in Florida the latter part of last winter about a year ago.

We would call to your attention that two qualifications in section 3(b)(2) are of importance, the first of which is the "solely for his employer qualifications." That is an appropriate and effective qualification. It's effective in that it eliminates every loophole I can imagine except for one, that was testified to by Mr. Fretz last time the committee held hearings on this bill. I will get to that in a moment.

The effect of that provision is it's effective for this reason. The class of persons that the qualification was designed to cover are clearly farm labor contractors in both the commonly understood and the statutorily defined meaning of that term.

I am sorry, Mr. Chairman, I was trying to save some time and I am afraid I have skipped something here.

If a crew leader or farm labor contractor, Mr. Chairman, attempts to operate without having the crew accompany him from job to job, he will discover very rapidly that he cannot effectively operate in that fashion, because if they don't accompany him then he is going to have to go to excessive time and expense in recruiting other workers.

Similarly, if he gains the reputation of being a crew leader who abandons his crew each time a crop is completed and doesn't take them with him to the next crop, then pretty soon he will discover that his reputation has caught up with him and workers won't work for him any more because those workers who want to work for crew leaders want the certainty of continued employment. That is the reason they go to work for crew leaders.

Accordingly, "the solely for his own employer" qualification will effectively eliminate any loophole there because it will have this effect.

If at the time the crew leader or employee hires the workers he will have hired them not solely for one employer, he will instead have hired them partially for the first farmer who engages him and partially for the second, and partially for the third.

Accordingly, a crew leader whose crew accompanies him from farm to farm, to farm cannot meet the legal requirements of this solely for his employer qualification and this is what crew leaders typically do. This is what 99 percent of them do.

Now, there is one conceivable loophole which some people might consider a loophole, others might not. At any rate it was testified, Mr. Fretz referred to it in his testimony, and that has to do with possible fraudulent recruitment practices, illegal wage practices, or other potential abuses when workers are recruited by employees at a distance, at a great distance, from the place of employment.

Mr. Fretz expressed the view that such an employee should not be exempt from cover. If the committee concludes that recruitment at a distance, at a great distance, from remote employer, raises a serious potential abuse, then the qualifications specifically tailored to that situation can be added to the section 3(b)(2) exclusion and substitution for the incidental basis qualification.

If so, we would suggest that the language which appears on the top of page 22 of our written testimony be used for that purpose. That language would qualify the exclusion so that it would not apply if the employee is engaged in such activities for the purpose of supplying migrant workers for agricultural employment from which those workers cannot regularly return after each work day to the community in which they resided at the time of recruitment.

Now you can see, Mr. Chairman, that the impact of this is that when you really try to look at the problems that Congress attempted to deal with here, you can readily see that if the workers go to and from the place in which they are recruited each day, then if the transportation is provided by the employer, then under typical workmen's compensation case law of which I am not aware of any exception, the workmen's compensation coverage of the employer would be applicable to the transportation, to the trip to and from work. There would, therefore, not need to be any liability insurance where the transportation is provided to and from the place of work daily.

Conversely, if the worker is recruited at a great distance and he comes from, say, Texas to Illinois, perhaps he is not technically an employee until he gets to Illinois, then in that circumstance it may well be that that recruiter down in Texas, even though an employee of the Illinois farmer or processor, should have to register, if for no other reason than to make sure that the insurance provisions requirements of the act would apply to that long haul, which may not be covered by workmen's compensation from Texas to Illinois and, therefore, if we place that kind of qualification in the act in substitution for the incidental basis qualification, we will effectively have closed the loophole about which Mr. Fretz expressed concern.

I have heard no testimony and on opinions either before the committee or outside of the committee as to any other loophole that need to be corrected. If there be one we will design some language to eliminate it. But we certainly can't tolerate—I don't mean tolerate—we can't expect the agricultural community to bear up under this no more than incidental language because that has the effect of, as interpreted by the courts, to require practically every employee of a farmer or processor, as it's being applied, to register, and that is patently absurd, and if that occurs then I can only predict, Mr. Chairman, there is a ready way by which farmers and processors can avoid having to have their employees registered, and that is to do exactly what the Congress did not intend. That thing that they can do is to abandon, to completely divest themselves of any direct employer-employee relationships with their workers, to completely abandon harvesting operations, cultivating operations of their own, and to turn totally to crew leaders.

Mr. Chairman, we cannot believe that it is good for workers or good for agriculture for all of us to turn entirely to crew leaders. There are many situations where crew leaders are the best way to go, if crew leaders are honorable, and many of them are, and because of the fact that some are not, we understand that those who are, nevertheless, are going to have to be subjected to regulation under this act, reasonable regulation that is designed, carefully refined and tailored specifically to meet the real abuses. We can't see any point in having the act applied so broadly to apply to people about which there has simply been no testimony of abuses.

There are a number of other issues that we support that are in Mr. Ireland's bill and Mr. McFall's bill and Mr. Sarasin's bill, and I think all of these matters will have been touched on by the time Mr. Fields testifies.

I would like to expand, however, on a couple of matters that were dealt with this morning by Congressman Ireland.

The first has to do with insurance. Apparently there is some misunderstanding about our concerns about insurance. There are several. We have no objection to the requirement that 100,000, 500,000, limit has been required of farm labor contractors, crew leaders, but before we get to the application of that to anyone else let me deal with one very specific problem.

The cost in Florida of a liability policy on a bus carrying 30 employees for a steel mill or for a road contractor is $251 a year.
tainly can afford such a premium. Unfortunately, when that same premium applies to a bus that carries 30 farmworkers for an exempt farmer, or an exempt processor, the moment that farmer, or processor, or his foreman who drives the bus is required to register and obtain and place the FLCRA endorsement on that policy, then the premium jumps from $251 in Florida to approximately $1,500. The reason it jumps is because of the uncertainty of the insurance companies about what FLCRA endorsement means.

The FLCRA endorsement says, and I quote—incidentally the FLCRA endorsement is not set forth in the act nor is it set forth in the regulations, but here is what it says.

Mr. Andrews. May I ask where is it set forth?

Mr. Shaw. On this piece of paper that the Department of Labor hands to you when you register.

Now that is not at all unreasonable. Farm labor contractors cer-

Now, this endorsement, before I read you what it says, it was reason it jumps is because of the uncertainty of the insurance compensation required of farmworkers.

At that time it probably made sense.

It says:

> To the extent of the limits of liability required by the Act, exclusion (c), that means exclusion (c) of a typical liability policy, does not apply to bodily injury sustained by any migrant agricultural worker.

Now exclusion (c) is a provision that is designed to cause the vehicle liability policy to dovetail precisely with the exclusive remedy provisions of workmen's compensation laws which, as you are familiar with, say that a worker hurt on the job can recover workmen's compensation but may not simultaneously sue his employer in tort.

Now, that provision has stood the test of case law for years and years and years. This exclusion says that that dovetailing exclusion of a vehicle liability policy shall not apply ever.

Now, where workmen's compensation insurance is not provided by the farmer, that is no real problem because the farmer had no work—I don't mean it's no problem, but it's not inappropriate, because the farm, the crew leaders, I am sorry, did not have workmen's compensation insurance. If he did not have workmen's compensation insurance then the vehicle liability policy would be the only place the worker could turn in the event he was injured going to and from work.

However, if the crew leader or farmer or processor has workmen's compensation insurance, then under all the case law with which I am familiar, that worker going to and from work daily is covered by workmen's compensation and, therefore, it makes no sense to say that the dovetailing provision of the vehicle liability policy shall not apply.

Mr. Andrews. Why don't you explain that to the gentlemen who were here this morning?

Mr. Shaw. We have had indepth discussions about that, sir. In any event, the result is that the insurance carriers don't know what it means, but they are afraid that someone might take the position that FLCRA preempted the exclusive remedy provision of State workmen's compensation law and allows double dipping, double recovery. That means after paying out $200,000 for permanent total injury under workmen's compensation, they might in turn get hit for some rather remarkable verdict against the same employer on the same injury in tort, and because of that, there are only two liability insurance carriers that will write a FLCRA-endorsed policy in Florida, only two. That then means that most of our small crew leaders who are not able to buy from either of them because the crew leaders don't have enough experience, have to turn to the assigned risk pool, which is a pool that every insurance company has to write a pro rata share of—this is insurance nobody will write in the States. If you write insurance in Florida you have got to take your pro rata share of these bad risks. The premium on the assigned risk pool is approximately $1,500 a year. There is a $1,250 difference between the ordinary premium versus the premium that applies because of this uncertainty.

The moment a FLCRA endorsement goes on, there is $1,250 that could go to all sorts of worker benefits, increases benefits, fringe benefits. In Florida citrus alone, Mr. Chairman, we have at least 1,000 crews. Well, 1,000 crews multiplied by $1,250 is $1.2 million. Here and there a $1.2 million, and before long you are talking about real money.

I stole that from someone else.

Mr. ANDREWS. Some Member of Congress, probably.

Mr. SHAW. Right. A very articulate Member of Congress. I have forgotten which one.

But in any event, we have a situation here that simply doesn't make sense and it can be remedied by one of two ways.

The Ireland bill has an amendment that will solve it. Another way, in view of the reluctance of the courts to deem the State law to be federally preempted, perhaps simply a statement in the record of this committee report saying quite convincingly that there is no intention for there to be any federally preemptive of the exclusive provision of State workmen's compensation might effectively eliminate this problem for every one and get the premium back down to $251 which all of us can afford.

Mr. Chairman, I would also like to touch on the record swapping provisions of the act. We have no problem with the recordkeeping provisions of the act but the record swapping provisions boggle our minds.

Now, it's certainly true the crew leaders were highly elusive, hard to find, and before this act was enacted, and before crew leaders were required to register, and before they were required to inform the Department within 10 days after every move they make and before this act in 4(C) required to the farmers Thou shall not hire a crew leader who is unregistered or whose registrations had been revoked.

It's certainly true before all of those things happened that the Department of Labor would have had a difficult time checking the wage-hour records of a crew leader. With that we cannot possibly disagree. We would agree fully. That before all of those things happened the Department would have had a difficult time.

But none of those are true any more. This act now does require crew leaders to register, it does require they have to notify the Department within 10 days after making a move, it does say to the farmers and processors who engage them, Thou shall not hire a crew leader whose license has been revoked, and does authorize the Department to revoke a crew leader who doesn't notify them within 10 days after move.

Accordingly, the Department has no real problem in saying to a crew leader we would like to see your record. In fact, if they can't find him they can start revocation proceedings, I would think, rather promptly.

Now, that being true, we see no excuse for the record swapping requirements of the act.

Now, as Mr. Ireland testified this morning, if there is one farmer or one processor that engages one crew leader for a whole year, all you have to get is a duplication of the same identical record, and that is no real problem.

But, Mr. Chairman, as Mr. Ireland testified, we have 17,000 citrus growers in Florida. We only have 1,000 crews.

Now, if the Department thinks it can get those wage-hour records more readily from 17,000 citrus growers than from 1,000 crew leaders, when it knows who the crew leaders are, and nobody knows who all the citrus growers are, I frankly would like them to explain it to me because I can't comprehend that.

It seems to me there is a readily available means of eliminating that problem. That simply is to amend the act to eliminate section 14 that requires every grower to get a record from every crew leader and instead insert a provision in section 5 of the act to say in addition to all the other things that he has to do, at the time he applies for renewal of his license, that he has got to say to the Department of Labor, look, if you want to see my records now or later, let me know and I will bring them up here now or later, whenever you prefer, and he has got to offer to do that at the time of registration.

Then if the Department has time to check them then, fine. I doubt that they will in most instances. But there may be a particular crew leader that they have been watching, and it may well be on a particular crew leader, yes, they certainly would like to review those records right then before they decide whether to renew him, because they have gotten some reports about many about which they are concerned, and legitimately so. In that event they can do that.

Conversely, for the routine crew leader about which there have been no problems, they can simply say to him, we will look at your record when we have time, right now we are simply going to deal with renewal.

It seems to me that is very effective, very cost effective and a very reasonable way to handle the problem and I can't frankly see any reason why the Department objects to that provision apparently they misunderstood it.

Mr. Chairman, we simply hope that this Congress will take a hard look at this act and remember examine just what the abuses were and are that this act is designed to prevent, and to very carefully tailor the language so it very effectively deals with those abuses and deals with them effectively, and make certain that there aren't any loopholes, but at the same time doesn't unnecessarily impose on farmers or processors or anyone else the requirements of the act.

Mr. Chairman, you have asked why do we object to this act? Well, let me respond another way. Why would a newspaper publisher object to complying with the requirements of this act if it were made applicable to newspaper reporters? Why would a newspaper publisher object to this sort of thing if it were made applicable to him? Why would a steel mill, why would a local department store, why would a local filling station operator, object if the requirements of this act were imposed upon him?

Nothing in this act is so onerous that it can't be done, but why, Mr. Chairman, should anyone, should anyone in these United States have the requirements of this act imposed on him if he is not in a class of people that have been found to be guilty of some rather serious abuses in the past?

Crew leaders apparently have been found to be guilty of some of these serious abuses and we don't quarrel with the application of the act to them, but we know of no such abuses by newspaper publishers or by farmers or by processors and we see no point in applying it either to newspaper publishers or farmers or processors except in those rare instances where it is not really one of them but merely a crew leader who is going under the guise of farmer or processor.

There the loophole should be plugged.

[The statement of Mr. Shaw follows:]

STATEMENT OF RODERICK K. SHAW, JR., GENERAL COUNSEL, CITRUS INDUSTRIAL COUNCIL, LAKELAND, FLA.

Mr. Chairman and member of the Committee, the Citrus Industrial Council greatly appreciates being granted the opportunity to present its views to the Subcommittee regarding HR 10631, 10053, and 8894 and other clarifying amendments to the Federal Labor Contractors Registration Act of 1963 as amended.

The Citrus Industrial Council is a non-profit trade association representing Florida Citrus Mutual and its 17,000 Florida citrus growers who grow most of the citrus fruit produced in Florida, Florida Canners Association and its 44 members who process all of the citrus juice produced in Florida, and Florida Citrus Packers Association which represents most of the citrus packing houses in Florida. The harvest season associated with citrus processing generally begins in November and runs through July. The harvesting season associated with citrus packing generally begins in September and runs through June. During the height of the processing season, approximately 27,000 workers are employed in citrus harvest. Part of the citrus crop is harvested by employees of farm labor contractors. Part is harvested by employees of processors, packers, or growers. Accordingly, the Citrus Industrial Council has a substantial interest in legislation which farm labor contractors as well as legislation which affects farmers, processors, farmer cooperatives, and their bona fide employees.

The purpose of our testimony today is to urge the adoption of several technical clarifying amendments. Several of the amendments we will propose are designed (i) to clarify what we believe to be the clear intent of the Congress as to who should and should not be regulated as farm labor contractors under the regulatory scheme of the Act, (ii) to accomplish that same result with respect to several classes of agricultural employers which apparently were not specifically considered by the Congress either when the Act was adopted in 1964 or when it was amended in 1974, and (iii) to perfect several provisions so as to maintain full protection for workers but in a more effective and reasonable manner.

These technical clarifying amendments are necessary because the Act is being applied in a manner which we believe to be in conflict with the intent of Congress with respect to those issues specifically considered by the Congress and in conflict with the objectives of the Act with respect to several issues which apparently had not been brought to the attention of the Congress at the time of the 1976 amendments.

As the Committee is aware, Section 3(b) of the Act sets forth the statutory definition of the term "farm labor contractor." The approach taken by the authors of that definition was to begin with a sentence which describes *virtually all* agricultural employment, then to follow the clearly overstated scope of the first sentence with a series of exclusions designed to have the net effect of limiting the scope of the overall definition to that intended by the Congress. When one bears in mind that the scope of the first sentence in Section 3(b) encompasses virtually all agricultural employment and the fact that even the smallest farmer who employs occasional part time help comes squarely within the provisions of that first sentence, the necessity of perfecting the exclusions which follows becomes apparent. Absent perfecting amendments, the scope of the application of the Act will extend far beyond the areas of potential abuse to which the Congress intended its effect to be limited.

Our review of the 1974 reports of House and Senate Committees lead us to conclude that Congress did not intend to regulate all agricultural employment. To the contrary, the legislative history appears to show a clear intent to limit the applications of the Act to a specific and limited segment of agricultural employment; namely, the "crew leader," the "crew pusher," or the "farm labor contractor" as those terms are commonly used and understood.

In order to carry out our understanding of the intent of Congress, we urge the Committee to recommend that the following amendments be adopted.

Our first suggestion is that Section 3(b)(2) be amended in the manner proposed by HR 8894, 10053, and 10631.

Section 3(b)(2) of the Act sets forth the exclusion applicable to farmers, processors, canners, ginners, packing shed operators, and nurserymen.

The first clarifying amendment we would suggest is that the word "personally" be deleted from Section 3(b). The word "personally" was inadvertently retained when the House adopted an amendment to strike out Senate amendments which appear on pages 12 and 18 of Senate Committee Report No. 93–1206, dated October 1, 1974.[1] The footnote which appears below describes fully the manner in which this inadvertent error occurred.

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[1] The October 1, 1974 Senate Committee version divided the 3(b)(2) exclusion into two subparts. "Subpart (A)" described the situation in which the farmer or processor hires the workers "personally" (i.e., *directly*). "Subpart 'B)" described the situation in which the farmer or processor does the hiring *indirectly* through a farm labor contractor engaged by him. It appears on page 12 of the October 1 Senate Committee Report. It read as follows:

* * * Such term shall not include * * * (2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman (A) *who personally* engages in any such activity for the purpose of supplying migrant workers solely for his own operation; or (B) *who indirectly* engages in any such activity through an agent or by contract, where he first determines that the person so engaged possesses a certificate from the Secretary that is in full force and effect at the time he contracts with such person so engaged."

The purpose of the Senate Committee's amendment was not to make the applicability of the exclusion depend on whether or not the farmer happened to be a corporation. Rather, its purpose was twofold. First, under Subpart (A), which would have applied when the farmer or processor operated its own harvesting operations, the exclusion was made to depend only on whether the purpose was confined to supplying the workers "solely for his own operations." Second, under Subpart (B), which would have applied when the farmer or processor engaged an agent or contractor to obtain the workers, the applicability of the exclusion was made to depend on whether "he first determines that the person so engaged possesses a certificate from the secretary that is in full force and effect at the time he contracts wih such person so engaged." The latter was tied to Section 9(b) (later deleted by House amendment) appearing on page 18 of the October 31 Senate Committee Report which read as follows:

"(b) Any farmer, processor, canner, ginner, packing shed operator, or nurseryman who directly engages in activity as a farm labor contractor either through an agent or by contract, and *who fails to satisfy the requirements of Section 3(b)(2)(B)* of this Act *shall be liable for any damages* arising from the acts or omissions of anyone engaging on his behalf in activities as a farm labor contractor without a certificate of registration as required herein, in any action brought under the Act, regardless of whether the farm labor contractor is an independent contractor or an agent of such person."

That version of the Senate bill did not contain a Section 4(c) see page 13 of the October 1, 1974 Senate Committee Report) which, in the final version of the bill, explicitly provided that any person engaging the services of a farm labor contractor must first determine that the contractor possesses a certificate in full force and effect. From the foregoing, it can be discerned that the Senate scheme was to impose disincentives, rather than an explicit prohibition against engaging the services of an unregistered farm labor contractor. The House preferred an explicit prohibition and added Section 4(c) to accomplish that result while, at the same time, deleting the disincentives set forth in the Senate version.

The Senate scheme was explained by the October 1 Senate Committee Report as follows:

"He is *also exempt* from coverage if he recruits workers *indirectly* through a contractor *provided* that he meets the requirement of *determining in advance* that the contractor has complied with the registration requirements of the Act. (Emphasis supplied) (Last line of page 6 and top of page 7).

"Subsection (b) of Section 12 amends Section 9 of the Act to provide that a grower or similar agricultural employer who engages an unregistered farm labor contractor in violation of the Act will be liable for damages arising from the contractor's acts or omissions in any action brought under the Act." (first paragraph on page 9)

The Senate approach was not acceptable to the House. On October 11, 1974, the House considered and adopted a House Committee amendment to the Senate amendment. The House amendment:

(i) Deleted the Senate's subpart (B) from subsection 3(b)(3) which would, had it not been deleted, have conditioned the exemption for farmers and processors upon whether or not crew leaders engaged by them were properly registered (right column, October 11, 1974),

(ii) Added a new subsection (c) to Section 4 which, for the first time, explicitly required persons engaging the services of farm labor contractors to make certain that they are properly registered (right column, page H 10518 Congressional Record, dated October 11, 1974, and

(iii) Completely rewrote the penalty provisions of Section 9 so as to impose a civil penalty for any violation of the Act (including newly added Section 4(c)) and deleted the provision found in Section 9(b) of the Senate version which would have made farmers and processors liable for the actions of *unregistered* contractors (right column, Page 10519 Congressional Record, dated October 11, 1974).

The House amendments were accepted by the Senate. Unfortunately, the distinguishing word "personally" was inadvertently left in Section 3(b)(2).

It is clear from the legislative history described in the footnote that:

(i) The word "personally" in Section 3(b)(2) was used in the October 1, 1974 Senate Committee version to distinguish the *direct* hiring of workers as employees of the farmer or processor from *indirect* hiring through crew leaders, *rather than* to distinguish *individually* from *corporately.*

(ii) The decision of a farmer or processor as to whether to incorporate or not to incorporate has no rational relationship to the potential abuses the Act is designed to correct.

(iii) A farmer or processor does not, by incorporating thereby become the kind of middleman contractor the Congress intended to regulate.

(iv) The word "personally" in Section 3(b)(2) was retained solely through inadvertent error.

Moreover, to interpret "personally" to mean "unincorporated" would render the words "processor, canner" meaningless since most, if not all, processors and canners are incorporated. We find it difficult to believe that Congress would have gone to the trouble of providing an explicit exclusion for processors and canners by the use of those two words in the first line of Section 3(b)(2) only to nullify them on the following line. It is unreasonable to assume that Congress would set out to emasculate or eliminate the 3(b)(2) exclusion in so cryptic or devious a manner as by the unexplained insertion of a single word. On the contrary, it is to be expected that if Congress intended to eliminate the 3(b)(2) exclusion it would have done so by striking the language or by changing the definition of the term "person" as used in the Act.

Unfortunately, the opposite position is currently being asserted by the Department of Labor in litigation now on appeal before the Ninth Circuit (*Ray Marshall* vs. *Silver Creek Packing Company*). Accordingly, it would be appropriate for the Congress to remove any possible doubt by deleting the word "personally" from Section 3(b)(2).

The next clarification we would urge relates to another qualification found in Section 3(b)(2) of the Act.

It is our understanding that the qualifying words "solely for his own operation" were inserted by the Congress[2] for the purpose of eliminating a loophole which would exist if a middleman contractor were able to take advantage of the 3(b)(2) exclusion merely by owning or operating a small farm thereby becoming a farmer as well as a contractor. Accordingly, this qualification is designed to deny the exclusion to a farmer who is *also* in the business of harvesting crops on farms operated by *other farmers;* and to deny the exclusion to a processor who is *also in the business of harvesting crops* which are to be processed at plants operated by *other processors.*

Unfortunately, the Department of Labor is interpreting the "solely for his own operation" qualification to 3(b)(2) in a much more restrictive manner which has no relevance to the abuses the Act was designed to correct.[3]

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[2] With respect to the intent of Congress, the following explanation contained in Senate Report No. 93–1295 dated November 21, 1974, is enlightening:

"* * * the primary users of such labor—farmers, growers, and packing shed operators have experienced great difficulty in obtaining a sufficient supply of agricultural labor either directly or through the offices of the United States Employment Service.

"The result has been the emergence and evolution of the farm labor contractor to a position of prominence as the primary supplier of agricultural labor. Although the specific functions of the farm labor contractor, often called a 'crew leader' or 'crew pusher', might vary from job to job, his role essentially remains the same—a *bridge between* the operator [here "operator" refers to farmers, processors and packing shed operators] *and the worker* * * *

"Because of these factors, the contractor has been permitted to exercise an inordinate amount of leverage over the workplace situation. The contractor's unchallenged bargaining position is clearly one of *detriment to both the farmworker and operator.* [Here "operator" refers to farmers, processors and packing shed operators.] Patterns of abuse have been well documented in Congressional hearings over the years.

"It is unfortunately all too common experience for workers to be abused by farm labor contractors. Testimony revealed that in many cases the contractor exaggerates conditions of employment when he recruits workers in their home base, or that he fails to inform them of their working conditions at all; transports them in unsafe vehicles; fails to furnish promised housing, or else furnishes substandard and unsanitary housing; operates a company store while making unitemized deductions from workers' paychecks for purchases, and pays the workers in cash without records of units worked or taxes withheld. * * *"

[3] In *Ray Marshall* v. *Paramount Citrus Association, Inc.* (in which the Court has not yet issued its ruling) the Department of Labor has contended that a packing shed operator should be treated as a middleman and required to register despite the fact that all of the fruit harvseted by the employees of the packing shed operator were packed by it in its own packing shed.

The 1976 Committee Reports contain an explanation which has proved difficult to apply:

"The Committee wishes to clarify the phrase 'solely for his own operation' as used in section 3(b)(2) of the Act. The Committee intends that application of this provision shall not necessarily depend on where title to the commodities involved rests at the time, but shall in the future depend on a full consideration of the economic realities of agricultural production and processing."

(First paragraph, page 8, House Committee Report 93–1493.)

(Fifth paragraph, page 7, Senate Committee Report 93–1295.)

The factors which bear on the point at which the farmer's operation can logically be deemed to end and that of the processor or packing shed operator to begin are innumerable. For example, the farmer may find it difficult to hire temporary employees for his brief harvesting season and economically wasteful to purchase harvesting equipment which would have only limited use once each year. It would obviously be fortuitous if under those circumstances the processor with whom the farmer is negotiating has a longer operating period, thereby enabling the processor to attract workers who are interested in the longer period of employment he can provide and enabling the processor to justify economically the cost of acquiring the harvesting equipment. Under those circumstances, it is obvious that the farmer's operation should logically be deemed to have ended immediately prior to harvest and the processor's operation to have begun with the harvest without regard to the point at which title to the crop passes from the farmer to the processor or other extraneous factors. Under other circumstances, the harvesting will logically be a part of the farmer's operations rather than that of the processor. Under still other circumstances, the processor's operations may begin even prior to harvest.

Unfortunately, the Department of Labor apparently disagrees with this delineation. In any event, for the Department of Labor to have to analyze the multiplicity of factors bearing on that question for the purpose of seeking to make a definitive determination in each instance as to the point at which the operation of the farmer is ended and that at which the operation of the processor or packing shed operator is begun will inevitably result in uncertainties and grey areas which will render enforcement difficult for the Department and certainly as to compliance difficult for farmers, processors, and packing shed operators. More importantly, such a delineation bears no relevance to the abuses the Act was designed to correct. We, therefore, urge that areas of uncertainty be resolved in a manner consistent with the objectives of the Act by amending Section 3(b)(2) in the manner set forth in HR 10631, 10059, and 8894[4] so as to provide that Section 3(b)(2) exclusion will be applicable where the employees plant, cultivate, or harvest a crop only if it is grown on the farm operated by the farmer by whom they are employed; or only if it is to be processed or canned at the plant of the processor or canner by whom they are employed; or only if it is to be packed at or diverted from the packing shed of the packer by whom they are employed.

If the exclusion is so limited, the potential loophole will have been eliminated. A contractor who seeks to avail himself of the 3(b)(2) exemption merely by owning or operating a farm will discover that under this amendment, he must also stop performing contracting services for other farmers. Thus the loophole will be eliminated and the intent of Congress will be fully satisfied.

The proposed amendment will make it clear that if the workers are employees of a farmer and are engaged in planting, cultivating, or harvesting crops *solely* on a farm operated by that farmer, that farmer will come within the terms of the exclusion without regard to passage of title, or other extraneous considerations. Similarly, it will make it clear that if the workers are employees of a processor and are engaged in harvesting crops which are ultimately processed *solely* at the plant operated by the processor, that processor will also come within the terms of the exclusion without regard to extraneous considerations. It will also make it clear if a packing shed operator's employees are engaged in harvesting crops which are ultimately packed *solely* at or diverted *solely* from the packer's packing shed that packer will come within the terms of the exclusion. The term "diverted from" is necessary because of the fact that at harvest time it is often discovered that all or a part of crop initially intended for packing is, instead, best suited for processing. Under those circumstances, that crop, or that portion thereof which is best suited for processing, must be diverted from the packing shed to a processing plant (not to another packing shed) rather than being packed in the packing shed. Accordingly, the words "diverted from" are necessary to avoid the economic waste which would result from having part of the crop harvested by the processor's harvest employees and the balance by the packing shed operator's employees.

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[4] Section 3 * * *

(b) * * * Such term shall not include * * *

(2) any farmer, professor, canner, ginner, packing shed operator or nurseryman who [personally] engages in such activity for the purpose of supplying migrant workers solely for his own operation *including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, packed in or diverted from its own operation.*

The intent of Congress was to enact remedial legislation to regulate and control the farm labor contractor, the crew pushed or body broker, who was acting as a middleman or bridge between the farmer and the packing shed operator on one hand and the agricultural worker on the other. The intent of Congress was also clear that there should be an exclusion for the farmer, processor or packing shed operator who employed agricultural workers, not in his capacity as a middleman, but in carrying out his own operation. We, therefore, urge the Committee to act favorably on these suggested amendments to Section 3(b)(2).

The next clarifying amendment we would suggest relates to the exclusion set forth in Section 3(b)(3) of the Act.

Section 3(b)(3) provides an exclusion for the bona fide employees of the farmers, processors, and other agricultural employers listed in the Sections 3(b)(1) and 3(b)(2).

The only qualification placed on that exclusion in the Act as originally enacted was that the employee either work "full time" for that farmer or processor or that he work "regularly" for that farmer or processor.

The 1974 amendments added two additional qualifications. The first was the addition of the phrase "solely for his employer." The second was the addition of the phrase "on no more than an incidental basis."

The purpose of the "solely for his employer" qualification was to close a potential loophole explained by Senator Nelson on the floor of the Senate on October 16, 1974, as follows:

"Mr. President, the purpose of this provision is *to prevent* farm labor contractors from avoiding registration *by becoming* the employee of *each and every* grower for whom they recruit and hire migrant workers, *while* at the same time *providing* an *exemption* under the Act *for* the *regular employee* of a grower whose duties may include recruiting and hiring solely for his employer." (Emphasis supplied.)

However, the purpose of the "on no more than an incidental basis" qualification was not explained in the Committee Report or elsewhere.

The "solely for his employer" qualification will effectively accomplish the purposes described by Senator Nelson. The class of persons that qualification is designed to cover are clearly farm labor contractors in both the commonly understood and the statutorily defined meaning of that term. Accordingly, the "solely for his employer" qualification will accomplish the dual objectives described by Senator Nelson. First, it will close a potential loophole which might otherwise have been used by farm labor contractors. Second, it will retain the exclusion applicable to foremen and other bona fide regular employees of farmers, processors, and shippers. That qualification is, therefore, both logical and consistent with the objectives of the Act.

On the other hand, the "on no more than an incidental basis" qualification bears no reasonable relationship to the abuses or opportunities for abuse which the Act was designed to regulate and correct.

The lack of any need for the "on no more than an incidental basis" qualification to effect the closing of the loopholes described by Senator Nelson is evident when one examines the decisive manner in which the "solely for his employer" qualification effectively closes that loophole.

To illustrate, consider the fact that a crew leader or farm labor contractor can operate successfully *only if* a major portion of his crew *accompanies him* from farmer to farmer or processor to processor. If few or none of the workers accompany him, he will have to spend a major part of his time recruiting and hiring a new crew before he can undertake another job. Since time so spent is unproductive in terms of income, a crew leader simply cannot afford to recruit a new crew each time he moves from one job to another throughout the year. Moreover, his ability to recruit a crew effectively will be adversely affected if he acquires a reputation of abandoning the crew at the end of each job. It is. therefore, evident that an essential attribute of a successful crew leader or farm labor contractor is that a substantial portion of the workers accompany him as he moves from job to job throughout the year. Where the workers *accompany him* in that manner, it is clear that his act of hiring those workers can*not* be considered to have been *solely* for any single one of those farmers or processors. Rather, it was *partially* for one farmer and *partially* for the others. Accordingly, a successful *farm labor contractor* can*not conform* to the new qualification that his hiring and other listed activities be "*solely* for his employer." Therefore, the "solely for his employer" qualification *will effectively close* the loophole by which farm labor contractors might otherwise have avoided registration by endeavoring to be classified as the employee of each and every grower for whom they recruit and hire workers.

Since the "solely for his employer" qualification fully and effectively accomplishes both of the objectives explained by Senator Nelson, by closing the potential loophole and by retaining the exclusion for foremen and other bona fide employees of farmers and processors, it is clear that the "on no more than an incidental basis" qualification is not necessary for the accomplishment of either of those two purposes.

Unfortunately, the "on no more than an incidental basis" qualification will thwart the latter objective by effectively nullifying the exclusion for vast numbers of foremen and other bona fide employees of farmers and processors if it is applied in the manner recently advocated by the Department of Labor in litigation which is currently pending. The Department has taken the position that the "on no more than an incidental basis" qualification can be satisfied only if the listed activities are insignificant both in terms of time and importance to the employee's total job responsibilities. Whether or not one agrees with the logic of the Department's position, the inescapable fact remains that such an interpretation may effectively nullify the Section 3(b)(3) exclusion for vast numbers of foremen and other bona fide employees (such as the director of personnel or director of harvesting) or farmers, processors, and packers. That is clearly in conflict with our understanding of the intent of Congress to regulate crew leaders and farm labor contractors while at the same time excluding foremen and other bona fide employees of farmers, processors, and packers from the regulatory scheme of the Act. Moreover, the denial of the exclusion for such foremen and other bona fide employees bears no rational relationship to the abuses and opportunities for abuse which the Act was designed to eliminate.

When one examines the hundreds of pages of testimony presented to the House and Senate Committees in 1963, 1973, and 1974, one finds that the abuses and opportunities for abuse about which concerns were expressed related *entirely* to crew leaders and farm labor contractors. The terms "crew leader," "crew pusher," and "farm labor contractor" are used hundreds of times by the many witnesses who appeared before the House and Senate Committees. To the contrary, I have been unable to find any testimony of abuses by foremen and other bona fide employees of farmers, processors, or packing houses in the record of those hearings. Moreover, when one reflects on the nature of the abuses complained of the reasons underlying the multiplicity of complaints about the farm labor contracting system and the lack of complaints about the traditional system becomes apparent.

My reference to the traditional system is to the system which prevails throughout commerce, industry, and a major part of the agricultural community under which workers are the *direct employees* of the merchant, factory, farmer, or processor; under which that employer assumes the full responsibilities of an employer without the intervention of the kind of middleman or body broker commonly referred to as a crew leader or farm labor contractor.

One of the major areas of abuse complained of related to cheating by the contractor on the wages paid to the workers and gouging by the contractor on the charges made to the farmers, processors, or packers by whom he was engaged. The opportunity for that kind of abuse results from the practice, now discontinued in many instances, of paying the crew leader or farm labor contractor a single contract payment out of which he disbursed wages to the workers and retained the balance for himself. This opportunity for abuse is not present under the traditional system since each worker is paid his individual wages directly by the farmer or processor by whom he is employed, frequently by check, thereby eliminating the opportunity for a middleman to skim a part of the worker's wages or to overcharge the farmer or processor.

Another area in which the farm labor contracting system falls short of the traditional system is in the area of financial responsibility. While many labor contractors are responsible and reliable, the testimony presented at the hearings indicate that many others lack adequate insurance and have a minimal net worth with the result that workers employed by crew leaders are often left without an effective remedy even though legal liability may be clear. Under the traditional system, that is not a significant problem since the investment of the farmer, processor, or packer in his farm, plant, or packing shed is usually substantial and since farmers, processors, and packers ordinarily carry ample insurance to protect both their investment and any potential claimants.

Another area of concern had to do with a number of issues all of which relate to the lack of effective accountability under the farm labor contracting system. The lack of an effective means by which crew leaders and farm labor contractors can be held accountable arises primarily because he often moves from place to place thereby rendering it difficult, if not impossible, for either the workers or the enforcement personnel of various governmental agencies to locate the crew leader or farm labor contractor after the abuse is discovered. If the crew leader cannot be located, he cannot be required to explain why a particular deduction was made from the worker's pay, why the housing was inadequate, or why the vehicle used was unsafe. Again, effective accountability is not a problem under the traditional system. The farmer's farm, the processor's plant, and the packer's packing shed all have a local situs. Unlike crew leaders who may be difficult to locate, it is a simple matter to locate the farmer, processor, and packer in order to hold him accountable for record keeping, for safety, and other matters related to accountability.

It is clear from the legislative history that the reason the farm labor contracting system is subjected to the regulatory scheme of the Act is because of the opportunities for abuse I have just described. It is equally clear from the legislative history that the reason the traditional system, including farmers, processors, packers, and their bona fide employees, should not be subjected to the principal requirements of the Act is that those opportunities for abuse have not been shown to exist under the traditional system. Accordingly, no legitimate objective can be accomplished by subjecting farmers, processors, packers or their bona fide employees to the regulatory scheme of the Act. Unfortunately, the latter is the ultimate of the "on no more than an incidental basis" qualification if it is applied in the manner advocated by the Department of Labor in litigation which is now pending.

The Department's stated position is that the "on no more than an incidental basis" qualification can be satisfied only if the listed activities are insignificant both in terms of time and importance to the employee's total job responsibilities. The *amount of time* spent by a bona fide foreman in hiring or transporting agricultural workers bears no rational relationship either to the abuses or opportunities for abuse about which testimony was given to this Committee or the Senate Committee. Similarly, the importance of the hiring activities of a foreman in relation to his total job responsibilities bears *no rational relationship* to those abuses or opportunities for abuse.

Since the "on no more than an incidental basis" qualification is not needed to close the only potential loophole which has been raised, since it bears no rational relationship to any of the abuses or opportunities for abuse the Act was designed to correct, and since it is likely to effectively nullify the intended exclusion for vast numbers of bona fide employees of farmers, processors, and packers operating under the traditional system, we respectfully submit that this qualification should be removed from the Act.

During the hearings before this Committee on July 1, 1976, Mr. Fretz, who will testify tomorrow, expressed concern about possible fraudulent recruitment practices, illegal wage practices, and other potential abuses when workers are recruited by employees at a distance from the place of employment. He expressed the view that such an employee should not be exempt from coverage.

If the Committee concludes that recruitment at a distance by an employee for a remote employer raises a serious potential for abuse, a qualification specifically tailored to that situation can be added to 3(b)(2) in substitution for the "incidental basis" qualification. We would suggest that the following language would fully accomplish that objective while, at the same time, retaining the intended exemption for other bona fide employees:

"Section 3(b)(3) of such Act is amended by striking the language 'on no more than an incidental basis' and substituting therefor the following: '*and who is not engaged in such activities for the purpose of supplying migrant workers for agricultural employment from which they cannot regularly return after each work day to the community in which they resided at the time of recruitment.*'"

We fully support the proposed definitions of "bona fide full time employee" and "bona fide regular employee" found in Section 6 of H.R. 10631, Section 6 of H.R. 10053, and Section 8 of H.R. 8894. Those definitions, coupled with the proposed amendments to Section 3(b)(3), will further perfect the objective of eliminating loopholes for crew leaders while, at the same time, providing an exclusion for most bona fide employees.

We fully support the proposals contained in H.R. 8894 and 10631 to exclude genuine agricultural labor cooperatives from the definition of farm labor contractor. The opportunities for abuse which are discussed in the 1975 Committee Report are inapplicable to farmer cooperatives. We know of no supportable basis for assuming that farmer cooperatives will endeavor to cheat workers, that they lack financial responsibility, or that efforts to hold them accountable cannot effectively be enforced. Neither is there any other basis, relevant to the purposes of the Act, for distinguishing farmer cooperatives from the numerous other classes of business organizations in commerce and industry which are not regulated by the Act. We, therefore, respectfully submit that the Act should be clarified to assure that farmer cooperatives formed for the purpose of providing a continuity of employment for farm workers and a dependable work force for its farmer members will not be deemed to be a farm labor contractor. This can be accomplished without risk of loopholes for middleman contractors.

We fully support the proposal to define "transport" in the manner set forth in Section 8 of H.R. 8894, Section 6 of H.R. 10053, and Section 6 of H.R. 10631. Other witnesses will elaborate on that amendment in greater detail. We understand the Department of Labor has taken the position that the mere advancement of a transportation allowance to workers constitutes "transporting" those workers thereby causing the person who advanced the moneys to be deemed a farm labor contractor subjecting him to the registration and regulatory requirements of the Act. Since the word "transport" is not presently defined, it is conceivable that the Courts may have difficulty ascertaining the actual intent of the Congress on that issue. We, therefore, recommend the legislation clarification set forth in Section 4 of the bill.

We also support the clarifying amendment to the definition of "migrant worker" set forth in Section 7 of H.R. 8894, Section 5 of H.R. 10053, and Section 5 of H.R. 10631.

For the reasons expressed by Congressman Ireland, we strongly support the proposed amendments set forth in Section 1, 8, 9, and 10 of H.R. 10631 relating to the insurance and "record-swapping" provisions of the Act. We urge the Committee to recommend those provisions for enactment into law.

CONCLUSION

In conclusion, we are *not seeking special treatment* for farmers, processors, packers, farmer cooperatives, or their bona fide employees. Rather, we are asking that they be *treated in the same manner as other employees and bona fide foremen in commerce and industry whenever they operate under the traditional system rather than the farm labor contracting system.* The reason a regulatory scheme such as that set forth in the farm labor contractor registeration act has not been imposed upon employers and bona fide foremen in commerce and industry is because the kinds of abuses about which this act is concerned have not been shown to be a significant problem in commerce and industry. Congress has, therefore, logically chosen not to apply the regulatory scheme of this act to commerce and industry. For exactly the same reason, that is, because of the absence of abuses, the regulatory scheme of this Act should not be applied to farmers, processors, packers, farmer cooperatives, or their bona fide employees where they operate under the traditional system.

Unless prompt action is taken to amend the Act to prevent it from being applied to farmers and processors who operate under the traditional system, it is likely more and more farmers and processors will be driven to abandon the traditional system and turn, instead, to the crew leader system.

Mr. Chairman, we thank you and the subcommittee for this opportunity to present our views. Thank you.

Mr. ANDREWS. Very good. Thank you. Mr. Fields.

STATEMENT OF C. H. FIELDS, ASSISTANT DIRECTOR, NATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATION, WASHINGTON, D.C.

Mr. FIELDS. Mr. Chairman, I am cleanup man on this panel so I will try to be brief and do some summarizing and make two or three points.

First, I would like to have my full statement entered into the record.

As you know, the Farm Bureau has membership across the country in excess of 2.8 million families, in 49 States and Puerto Rico.

Several thousand of those members are involved in the employment of crew leaders and crews, and so we have a rather broad interst across the country in this problem.

I think that widespread interest has been demonstrated by the number of bills that have already been introduced to amend this act by various States.

As I will report in a minute, there is another bill going to hit your subcommittee within a couple of days, if the plans are carried out. We regret this subcommittee has to take this time, the Congress has to take this time, to consider these amendments because in our opinion if the Department of Labor took a reasonable attitude most or all of these problems could be solved by reasonable interpretation of the act by the Department of Labor. But we have seen and witnessed here this morning this stonewalling on the part of the Department, and it's perfectly evident now that they are not willing to accept one comma's change in the act. This is what we have experienced. We have presented reactions to the regulations they have put out. They have been ignored, largely. It's perfectly evident that the Department has no intention of solving these problems. The only answer we have gotten from the Department is that they will be solved in court.

We submit that is an abdication of their responsibility at the expense to the public and those of us who have to pay our own lawyers fees to do these things.

Now, as we see it there are six problem areas that need to be clarified in this law.

No. 1: To make sure that we really exempt farmers and growers, processors and canners, ginners and packing operators, and nurserymen, and so forth who engage in the recruitment, transportation and employment of migrant workers solely for their own operation. There is clearly the original intent of Congress. We want that carried out.

No. 2: To exempt full-time foremen and other employees from registration. This also was clearly the intent. This has been discussed in some detail. I won't go into it any further.

No. 3: The definition of the word transport. It has been clearly described here today how that has created problems and that is certainly something that needs to be clarified.

No. 4: The definition of the word migrant. I want to spend a little bit of time on that.

This word migrant is a widely misunderstood word, probably one of the most widely misunderstood words in this country.

Often it's used as a synonym for all farm workers or for all farm workers who are seasonally employed.

According to the U.S. Department of Labor there was a total of 149.400—only 149,400 migrant farm workers at the peak employment period of 1974.

In the past 3 years, this total has been reduced even further. By way of contrast, there were 641,000 nonmigrant seasonal workers employed on farms in the United States during that same month.

Now these were local residents called commuters when engaged in farm employment, who were performing seasonal work on farms.

There was a time when migrants made up a much larger portion of the farm work force but farm worker migrancy has been on the decline for a number of years, and that decline seems to be continuing.

You may note, if you will refer to the language of the act, throughout the act the word migrant is used. The word seasonal farm workers is not used except in reference to other statutes in the definition of migrant worker in one place in the act.

But it's perfectly clear if you read the act, the original intent of Congress was that they wanted to protect migrant workers through the act.

Well that is where we have gotten into a lot of trouble in this last change in the act.

The use of the term "migrant" in the act made sense prior to the 1974 amendments, as it was these particular workers who had been subject to a certain amount of abuse by a few irresponsible crew leaders and labor contractors.

The 1974 amendments, however, amended the act to define migrant workers to include all seasonal and temporary workers including local residents who commute to their jobs daily. The act is no longer aimed at protecting the welfare of the migrant worker and his family which we believe was the original intent and principal justification for this particular Federal regulation.

We suggest that a new definition of migrant worker be added to the act to describe those workers who are transported from their regular or permanent residences and who take up temporary residence on the farm where employed or in temporary housing located in a nearby area.

No. 5: Exemption of farmer cooperatives and nonprofit associations, we have discussed that at length here today. We do favor making that exemption clear in the act.

It makes absolutely no sense to us to exempt farmers who are recruiting, transporting, or employing migrant worker for their own operation and not to exempt nonprofit associations of those same farmers who have formed some associations for the purpose of performing the same services.

As far as we know, these nonprofit associations have never been thought of as crew leaders or labor contractors, and have not been a part of the labor contractor problem.

I might point out I didn't hear anything from the Department of Labor this morning to indicate there had been any abuse or exploitation of workers by these cooperatives.

The only thing they have been accused of is trying to refuse to register under this act.

In our view there would be no need for this act if all farm labor contracting was performed by these cooperatives because abuses would not exist.

The Congress should encourage the formation and operation of such associations which are incorporated under rigorous State statutes and which qualify for exemption from the Federal income tax if they meet the requirements of Capper-Volstead Act. 42 Stat. 388, 7 USCA 291–292. Such an exemption should also cover the officers and managers of such associations.

No. 6: The 1974 amendments to the act also created confusion, at least in the minds of those in the Department who are administering them, as to whether a grower who employs the services of a labor contractor is the legal employer, or whether the contractor is the employer. The result is that the Department tends to hold both parties responsible as employers. We suggest that the act be amended to lay down guidelines to be followed in determining which party is the employer.

We favor passage of legislation that addresses the several problems in the administration of the act we have outlined in this statement. Several bills, including H.R. 8894, H.R. 10053, and H.R. 10631, and others, have been introduced to remedy some of these problems.

We have been working with Congressman Hightower and several other members, in the preparation of a bill that we understand will be introduced this week and hopefully will land in the hands of this subcommittee shortly. We believe it will be the most complete bill yet introduced and we urge the subcommittee to give it particular attention.

In addition to clarifying the word "personally" in section 3(b)(2) of the act, and the phrase on no more than an incidental basis in section 3(b)(3), the bill exempts bona fide nonprofit cooperative associations of farmers from registration as labor contractors. It also clarifies the definition of "fee," "transport," "bona fide full-time employee," and "bona fide regular employee" and provides a new and meaningful definition of "migrant worker."

In addition, Hightower bill adds a new section 15 to the act to provide guidelines for the determination of who the legal employer is in a given situation.

The suggested amendments, taken as a whole, are not intended to weaken the effectiveness of the act or its administration. On the contrary, we believe these amendments will strengthen the act, since they will end most of the confusion that now exists and will direct the Department to concentrate its enforcement efforts on those crew leaders and labor contractors whom the Congress intended to bring under regulation.

We urge this subcommittee to act promptly in reporting out a bill. We stress the importance of action by the Congress during this session. Growers, workers and contractors should not have to go through another season with the confusion and inequities that now exist in the administration of this act.

We appreciate the opportunity to present these views.

[Statement of Mr. Fields follows:]

PREPARED STATEMENT OF C. H. FIELDS, ASSISTANT DIRECTOR, NATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATION

We appreciate this opportunity to present the views of the American Farm Bureau Federation on the problems of definition and interpretation that have arisen since the passage of extensive amendments to the Farm Labor Contractor Registration Act in 1974.

Farm Bureau is the largest general farm organization in the United States with a membership of 2,895,357 families in 49 States and Puerto Rico. It is a voluntary, nongovernmental organization, representing farmers and ranchers who produce virtually every agricultural commodity produced on a commercial basis in this country. Members include several thousand growers in a number of states—mainly producers of vegetables, fruits, and ornamental horticulture crops—who either employ the services of labor contractors or have been inadvertently affected by the 1974 amendments to the Act.

In January of this year, at the annual meeting of the American Farm Bureau Federation in Houston, Texas, the voting delegate of the member State Farm Bureaus adopted a concise but meaningful policy statement regarding the difficulties already encountered or anticipated with the amended Act.

"The 1974 amendments to the Farm Labor Contractor Registration Act, as interpreted by the Department of Labor, have proved to be burdensome, unworkable, and confusing. Since efforts to date to secure reasonable and workable interpretations and regulations by the Department of Labor have failed, we call upon the Congress to further amend the Act to clarify certain definitions and interpretations in line with the original intent."

We regret that it is necessary for the Congress to give consideration to such legislation. It is our opinion that the Department of Labor has failed to consider the intent of Congress, as plainly spelled out in the Committee reports and in the dialogue that took place on both the House and Senate floors during consideration of the 1974 Act. In February, 1976, in response to the publication of rules and interpretations in the Federal Register, we filed detailed comments wth the Department of Labor, in which we spelled out our suggestions for reasonable interpretations that would have avoided the necessity for legislation including the amendments to the Act passed by Congress since 1974. The unofficial response given by responsible persons in the Department is that such interpretations will be left to the courts. We consider this an unacceptable and needless abdication of responsibility.

Since it is clear that the Department does not intend to make the needed interpretations to carry out the intent of Congress, we want to express our appreciation to the several members of Congress who have introduced bills to amend the Act, and to this subcommittee for holding these hearings, so that the Congress can take appropriate action on some clarifying amendments that are needed to get this program back to its original intent and purpose.

As we see it, six problem areas need to be clarified:

(1) Exemption of farmers, growers, processors, canners, ginners, packing shed operators, and nurserymen who engage in the recruitment, transportation, or employment of migrant workers solely for their own operations. The Department has ruled that because the Congress included the word "personally" in Section 3(b)(2) corporations, partnerships, and associations of such persons are not exempt. It is clear to us, although evidently not to the Department of Labor, that Congress did not intend that its use of the word "personally" should exclude partnerships, corporations, or associations.

Many family farms are incorporated for tax and management purposes. If the present interpretation of the Department is allowed to stand, the president of such a family farm corporation would have to register under the Act, even though the corporation hires only family members who are the owners of the corporation.

(2) Exemption of full-time foremen and other employees from registration. The Department has interpreted the words "on no more than an incidental basis" in Section 3(b)(3) in the most narrow manner, ruling in effect that a foreman or other full-time employee of an individual farmer, partnership, farming corporation, or association of farmers must register as a labor contractor, if he recruits, transports, or employs one or more migrant workers.

(3) Definition of the word "transport." The Department of Labor has defined this term in an all-encompassing manner, indicating that, even where an empolyer merely provides for a transportation allowance, or furnishes a worker a bus ticket or airplane ticket, such employer becomes a labor contractor subject to the Act. Such an interpretation is clearly beyond the intent of the Congress.

(4) Definition of the word "migrant." This is a widely misunderstood word. Often it is used as a synonym for all farm workers or for all farm workers who are seasonably employed. According to the U.S. Department of Labor, there was a total of 149,400 migrant farm workers at the peak employment period of 1974. In the past three years, this total has been reduced even further. By way of contrast, there were some 641,000 nonmigrant seasonal farm workers employed on farms in the United States during that same month. These were local residents—called commuters when engaged in any other form of employment—who were performing seasonal work on farms. There was a time when migrants made up a much larger portion of the farm work force, but farm worker migrancy has been on the decline for a number of years, and that decline seems to be continuing.

The use of the term "migrant" in the Act made sense prior to the 1974 amendments, as it was these particular workers who had been subject to a certain amount of abuse by a few irresponsible crew leaders and labor contractors. The 1974 amendments, however, amended the Act to define migrant workers to include all seasonal and temporary workers, including local residents who commute to their jobs daily. The Act is no longer aimed at protecting the welfare of the migrant worker and his family which we believe was the original intent and principal justification for this particular federal regulation.

We suggest that a new definition of "migrant worker" be added to the Act to describe those workers who are transported from their regular or permanent residences and who take up temporary residence on the farm where employed or in temporary housing located in a nearby area.

(5) Exemption of farmer cooperatives and nonprofit associations. We favor an amendment to Section 3 to exempt nonprofit cooperatives and associations of farmers from the Act. It makes no sense to us to exempt farmers who are recruiting, transporting, or employing migrant workers for their own operations and not to exempt nonprofit associatons of those same farmers who have formed such associations for the purpose of performing these services. As far as we know, these nonprofit associations have never been thought of as crew leaders or labor contractors and have not been a part of the labor contractor problem. On the contrary, these associations have done much to promote better housing and working conditions for migrant workers. In our view, there would be no need for this Act if all farm labor contracting was performed by these cooperatives. The Congress should encourage the formaton and operation of such associations which are incorporated under rigorous state statutes and which qualify for exemption from the federal income tax if they meet the requirements of the Capper-Volstead Act (42 Stat. 388) 7 U.S.C.A., 291–292. Such an exemption should also cover the officers and managers of such associations.

(6) The 1974 amendments to the Act also created confusion, at least in the minds of those in the Department who are administering them, as to whether a grower who employs the services of a labor contractor is the legal employer, or whether the contractor is the employer. The result is that the Department tends to hold both parties responsible as employers. We suggest that the Act be amended to lay down guidelines to be followed in determining which party is the employer.

We favor passage of legislation that addresses the several problems in the administration of the Act we have outlined in this statement. Several bills, including H.R. 8894, H.R. 10053, and H.R. 10631, and others, have been introduced to remedy some of these problems. We have been working with Congressman Hightower and several other members, in the preparation of a bill that we understand will be introduced this week, (2) We believe it will be the most complete bill yet introduced and we urge the Subcommittee to give it particular attention. In addition to clarifying the word "personally" in Section 3(b)(2) of the Act, and the phrase "on no more than an incidental basis" in Section 3(b)(3), this bill exempts bona fide nonprofit cooperative associations of farmers from registration as labor contractors. It also clarifies the definitions of "fee", "transport", "bona fide full-time employee," and "bona fide regular employee" and provides a new and meaningful definition of "migrant worker".

In addition, Hightower bill adds a new Section 15 to the Act to provide guidelines for the determination of who the legal employer is in a given situation. The labor contractor or the grower who employs the services of such contractor. This new section would put an end to the existing confusion on this point.

The suggested amendments, taken as a whole, are not intended to weaken the effectiveness of the Act or its administration. On the contrary, we believe these amendments will strengthen the Act, since they will end most of the confusion that now exists and will direct the Department to concentrate its enforcement efforts on those crew leaders and labor contractors whom the Congress intended to bring under regulation.

We urge this subcommittee to act promptly in reporting out a bill. We stress the importance of action by the Congress during this session. Growers, workers and contractors should not have to go through another season with the confusion and inequities that now exist in the administration of this Act.

We appreciate the opportunity to present these views.

Mr. Andrews. Very good, Mr. Fields. Thank you, sir.

Is there anything anyone would add after having heard each other?

[No response.]

Mr. Andrews. I just regret that more of our members couldn't be here today. This is a very small subcommittee in terms of membership.

In the first instance, most of them are rather senior members who have chairmanships and certain subcommittee meetings of their own and, therefore, it's very hard to get them to meetings of this subcommittee, for reasons I well understand.

When we get around to some consideration of markup of various bills I am afraid our membership will suffer the consequences of not having heard much of the testimony thus far given here or subsequently, if that should be the case.

So to the end I was just thinking of the possibility that there be available to the subcommittee at the time of markup perhaps someone from the Department of Labor and someone who can speak to the objections to the present bill. substantially, as you gentlemen have, and I should think in all fairness, someone from the Department of Labor, who might object to our views, but perhaps someone to a considerable extent at least speak on behalf of the agricultural labor community. That would be difficult, I think, because I am afraid many persons would object to being included or excluded from such a meeting, and obviously if you brought into such a forum all the people who would like to be there and tried to elicit all of them you couldn't, obviously just time and circumstances would be such you couldn't make progress, but I believe I would continue to give that some consideration and perhaps you might also see, if we do determine that we would like to proceed in that manner.

Mr. FIELDS. I am sure we could decide on one person from this group.

Mr. ANDREWS. Or maybe two. I would hate to say we will not permit two. But you have to have some reasonable limit, and, likewise, if the Department of Labor could send over one or two people to perhaps speak for the Department as to these matters—and I don't know who—but perhaps we can find some person or persons that the other side would be more or less agreed could speak on their behalf so we would have people available.

What do you think of that?

Ms. BAUM. Yes, sir, a good idea.

Mr. ANDREWS. Maybe that would be a big help to us, a more friendly constructive debate.

Mr. FIELDS. If you would let us have a vote on the committee we would have a little more to say.

Mr. ANDREWS. In that case I believe it would be a tie.

If we had voting representation from each side you would cancel out each other.

If you consider that. Are you from the Labor Department?

A VOICE. Yes, sir.

Mr. ANDREWS. State that to some of the gentlemen who were here this morning and see if they would be able to call in one or two persons during the markup. So maybe if we had a couple of people to represent the various interests, the farmers, processors, et cetera, and the Department, we can resolve some of these difficult issues.

All right, then, we will adjourn until 10 o'clock tomorrow morning.

[Whereupon, at 4:05 p.m. the subcommittee adjourned, to reconvene at 10 a.m. Thursday, February 23, 1978.]

FARM LABOR CONTRACTOR REGISTRATION ACT

THURSDAY, FEBRUARY 23, 1978

House of Representatives,
Subcommittee on Economic Opportunity,
Committee on Education and Labor,
Washington, D.C.

The subcommittee met at 10:10 a.m., pursuant to call, in room 2257, Rayburn House Office Building, Hon. Ike F. Andrews (chairman of the subcommittee) presiding.

Members present: Representatives Andrews and Goodling.

Staff present: William F. Causey, Patricia A. Sullivan, Neil B. Krugman, and Edith C. Baum.

Mr. Andrews. Ladies and gentlemen, may I have your attention, please.

We welcome each of you here. As I presume you know, this is the second and last day of the hearings of the Economic Opportunity Subcommittee of the Education and Labor Committee.

We are interested in hearing from each of you with respect to the Farm Labor Contractor Registration Act.

Mr. Fretz. Mr. Chairman, Mr. O'Hara has indicated that he will not be able to attend, and I think that with the consent of the subcommittee staff, there has been a substitution. Mr. Harrington, who is two to my right, will introduce Charlotte Hill. Immediately to my right is Leroy Tyler. They are both from Pennsylvania.

Mr. Andrews. Good. It is our intention to hear anyone who wants to be heard, representing any point of view, with respect to this legislation and the proposed changes.

With that note, let me just ask you to identify yourselves. We will start with the lady on my left.

Ms. Masson. My name is Robin Abrahamson Masson. I am from Western New York Rural Legal Services.

Mr. Andrews. All right. The gentleman next to you.

Mr. Tyler. Leroy Tyler from Pittsburgh, Pa.

Mr. Andrews. Are you representing any group?

Mr. Tyler. No. I work for the Farm Work Cooperation.

Mr. Andrews. And you, sir?

Mr. Harrington. My name is Bill Harrington. I am with the Farm Labor Service Center in Philadelphia. I am here today representing the National Association of Farmworker Organizations, the rural and national farmers.

Mr. Andrews. All right. And you, young lady?

Ms. HILL. I am Charlotte Hill from the Philadelphia Farm League Services Center. I am representing the farmworkers there in Philadelphia.

Mr. FRETZ. I am Burton Fretz with the Migrant Legal Action Program here in Washington, D.C.

Mr. ANDREWS. Thank you. And you, sir?

Mr. MASINTER. My name is Michael Masinter representing the Florida Rural Legal Services.

Mr. ANDREWS. Have you determined in what order you wish to present your testimony?

Mr. FRETZ. Yes, Mr. Chairman, if I may offer some introductory remarks, and we will simply go down the table with a brief opening statement, if that is satisfactory. We would be happy to try to respond to any questions.

Mr. ANDREWS. Is that satisfactory with each of you?

[Affirmative response.]

Mr. ANDREWS. All right, Mr. Fretz.

Mr. FRETZ. Thank you, Mr. Chairman.

Mr. ANDREWS. I have a copy of your statement.

STATEMENT OF BURTON D. FRETZ, LEGISLATIVE COUNSEL, MIGRANT LEGAL ACTION PROGRAM, INC.

Mr. FRETZ. Yes, sir. I have submitted a statement. It runs about 19 pages. I will not read the statement, nor will I attempt to summarize the statement. I would like to make one or two observations about it. I would respectfully request that the statement be included in the hearing record, and duly considered by the subcommittee in any future deliberations it may have on these proposed bills.

And I should add, Mr. Chairman, that we are extremely grateful for the invitation extended by the subcommittee to the Migrant Legal Action Program to appear today and comment.

Mr. ANDREWS. Mr. Fretz, may I ask a question of each of you?

I have gathered the impression from the witnesses yesterday, and from the correspondence that we have received, that generally, there does not seem to be any desire or effort to change the present act in terms of its substantive provisions.

It seems that the contentions have to do with who should or should not be subjected to the act. Yesterday, there were seven Members of Congress who appeared before us, each of whom supports legislation which would exempt someone from the provisions of the act.

They do not want to change the act in terms of what it does, but as to those who are to be covered by it.

The people who spoke on behalf of the Department of Labor expressed the view that they do not want to change the act in any way whatsoever. They are opposed to each of these bills which, as I say, would exclude certain people.

Is it fair to assume that all of us are interested in the question of whether certain people should or should not be excluded?

Mr. FRETZ. Yes; I believe that that is an accurate characterization of the presentations with the one exception, Mr. Chairman, of some opposition by agricultural employers to the recordkeeping requirements, section 14 of the act.

I believe Mr. McFall's bill, and I believe that Mr. Hillis' bill would either modify or completely delete the existing requirement that the use, that is, the employer of farmworkers obtain and maintain payroll records from the contractor which the employer uses.

Mr. ANDREWS. You are correct, and I am in error. There are some contentions from both sides with respect to whose records should be filed and maintained and the extent of the records.

Mr. FRETZ. I think that is quite ancillary, and for our own general purposes, we can characterize our concern as one of the coverage rather than strengthening or weakening the existing requirements.

Mr. ANDREWS. I also believe that no one proposes that there should not be certain insurance requirements for those people who are covered by the act. However, there is some contention that the required insurance should be decreased in amount, and substantially decreased in cost, by eliminating or altering the FLCRA endorsement that goes on certain policies. That question goes to the issue of whether workmen's compensation should be permitted under the act.

I believe then we have three things that should be covered: the so-called paperwork requirements, the amount of insurance required, and whether the act should be modified with respect to the FLRCA endorsement.

Does anyone disagree with that?

Mr. HARRINGTON. The only other area of contention, I believe, that is left is that of enforcement currently undertaken by the Department of Labor.

I think that a number of us would prefer to discuss the broadening of the exemptions, and a lessening of the requirements. After we had seen that the enforcement by the Department of Labor is aggressive and systematic—I think I am speaking not only for myself, but others—we found enforcement to be less than adequate, and in many cases, nonexistent.

Mr. ANDREWS. Would you attempt to change the legislation itself, or is that not an administrative matter?

Mr. HARRINGTON. I suspect that at this time it is not an administrative matter. It is a problem of a lack of resources.

Mr. ANDREWS. Yesterday, in response to the question as to how many employees the Department utilized to carry out the mandates of legislation, we were told that people are working on enforcement part time. I think that the budget provides for 37½ man-years. I guess during the harvesting season they may have several hundred working; perhaps at another time of the year, 10 or so. They average that out to 37½ man-years. Whether that would be, or should be, or could be increased, would be a matter for the Appropriation subcommittee rather than this subcommittee.

We will keep our conversations, essentially, then, within those three areas. Maybe that would save some time, and make our time more productive, and we will be talking about the essence of the matter.

Excuse me for interrupting.

Mr. FRETZ. Mr. Andrews, we will attempt to confine our remarks to specific areas being contemplated by the subcommittee. Mr. Chairman, I think that the Chair put its finger on the nub of the question facing the subcommittee yesterday afternoon with a question to the panel of employers' representatives asking the representatives to try to describe the burden of coverage for the employers in question.

I think that that question arose from the Chair in the context of coverage of grower associations, but I think that is a question which is relevant to all of the bills before the subcommittee which would modify or delete coverage of certain categories or employers. Namely, what is the burden. What is the unfairness. What is so onerous about the obligations imposed by the act that no right-minded employer could not comply.

I think that when we talk about an exception or an exemption under the act, it would create the freedom to engage in activities—certainly, the subcommittee and, indeed, the Congress would not want to encourage an exception under the act from coverage of an employer—really, the freedom, for example, to fail to disclose to workers the material terms of employment.

It is the freedom to overrecruit. It is the freedom to haul workers in unsafe buses and uninsured buses. It is the freedom not to pay workers promptly, when due. It is the freedom to house workers in unsafe or unsanitary housing.

I suggest that these freedoms would encourage one to commit acts which no scrupulous employer would want to see within the scope of employment under him.

It is the freedom to commit acts which, certainly, the subcommittee and Congress would not otherwise want to encourage employers to engage in outside the act.

And, as a result, it is not the most scrupulous employer who would be benefited by the bulk of the proposals before the subcommittee. It is the less meticulous and the less scrupulous employer or person engaging in the farm labor contracting activity.

When the Chair addressed this question to the panel of employers' representatives yesterday, I believe it was Mr. Gordon who endeavored very conscientiously to try to describe the nature of the burden to the subcommittee, and I think it is interesting that the primary objection, or the primary burden that was recited had to do with the burden of paperwork under the act, and we strenuously submit to the subcommittee, Mr. Chairman, that when we weigh the need for the variety of minimal protections that are accorded to farmworkers under the act against the nature of the paperwork requirements, the need for the protections far outweighs the paperwork requirements.

I submit to the subcommittee that if we look at the nature of those requirements, that they are more accurately characterized not as burdens, but more as administrative inventions.

I think, for the most part, what we are talking about when we look at the paperwork requirement is that fairly simple form on which the contractor applies for a certificate of registration. The form which I had looked at appeared to be some two pages of fairly simple questions and, of course, it entails a thumbprinting obligation, but I think we can analogize that requirement to the requirement that everyone faces in seeking, for example, a driver's license, one that entails minimal personal inconvenience, and one that entails the performance of obligations which any meticulous employer should perform, and for that reason, I suggest that no case has been made as to why the burden of coverage under the act on any meticulous employer is so great that any of the exemptions should lie.

I would conclude my introductory remarks with those observations, Mr. Chairman.

Mr. ANDREWS. Thank you, sir. For the most part, I believe I will withhold any comments or questions until each one of you has made a preliminary statement.

[The prepared statement of Mr. Burton D. Fretz, legislative counsel, Migrant Legal Action Program, Inc., follows:]

PREPARED STATEMENT OF BURTON D. FRETZ, LEGISLATIVE COUNSEL, MIGRANT LEGAL ACTION PROGRAM, INC.

Mr. Chairman and members of the Subcommittee, the Migrant Legal Action Program, Inc. greatly appreciates this opportunity to present views on sundry amendments to the Federal Fair Labor Contractor Registration Act, 7 U.S.C. § 2041 *et seq.*

The Migrant Legal Action Program, Inc. is a non-profit national legal services support center located in Washington, D.C. Our program provides support for some 130 legal services offices in 29 states, for their farmworker clients, and for other farmworker individuals and organizations in the country. We currently represent such interests in a variety of cases. Those interests would be strongly prejudiced by the proposals which this Subcommittee presently entertains.

Congress originally passed the Farm Labor Contractor Registration Act in 1963. In 1973 and 1974 this Subcommittee and the counterpart Senate Subcommittee on Employment, Poverty and Migratory Labor heard extensive testimony about continuing abuses in the system of farm labor recruitment throughout the United States. Findings from this testimony led to enactment of the 1974 amendments broadening coverage under the Act and strengthening its provisions. These amendments became effective on January 1, 1975.

SUMMARY

Proposals before the Subcommittee today would effectively eviscerate the protections for America's farmworkers which this Subcommittee achieved in 1974. In reviewng these proposals, this Subcommittee must keep two points paramount in mind.

First, the proponents of these proposals seek to avoid coverage under the Act but they fail to prove any unfairness and burden which comes from the Act's application to them. A frequent argument is that the relationship between an agricultural employer and its migrant employees is free of the evils which the Act seeks to remedy. Even if so, we must ask what freedom the agricultural employer seeks by escaping the Act's obligations. Those obligations, in fact, are minimal and eminently reasonable. If agricultural employers abide by existing law and otherwise treat their workers properly, then any freedom from inclusion under the Act is irrelevant.

An exemption from the Act's coverage means the freedom to violate state health and safety laws; it means the freedom not to insure the vehicles in which workers are transported; it means the freedom to violate contracts of employment; it means the freedom not to pay workers promptly when due; it means the freedom to hire illegal alien workers. Those agricultural employers who already treat their workers scrupulously bear no disadvantage from the Act's coverage. Indeed, they probably are happy to see their less meticulous competitors brought into compliance with the minimal standards which the Act provides. The unscrupulous employer profits most from the exemptions urged on this Subcommittee today.

Second, this Subcommittee will hear tales of quirks resulting from uncertainty or unevenness in the Act's enforcement by the United States Department of Labor. Enforcement difficulties lie not in an excess of zeal by the Department but rather in an excess of neglect. The Department and its Employment Standards Administration continues to treat the Act like a poor cousin. Although the level of enforcement has risen somewhat with the current administration, the Department still gives FLCRA almost no attention. For example, three years after the 1974 amendments the Department of Labor has failed to publish definitional regulations, even though such regulations could lend a great measure of clarity and evenness to enforcement.

The Department provides few compliance officers under FLCRA. In South Texas, the nation's greatest concentration of farmworkers and farm labor contractors, the Department allocates only two compliance officers. The Department focuses its meager resources on securing registration of as many individuals as possible—a policy which produces high nose counts and little else. This obsession with registration may account for uncertainties experienced by some individuals who are peripherally subject to coverage as contractors and for the absence of strong exemplary enforcement action against the most flagrant violators of the Act. This Subcommittee in future hearings profitably could explore the relationship between the Department's benign neglect of FLCRA and oscillations in its enforcement.

With these considerations in mind, we can examine the pending proposals and see some difficulties with each.

ANALYSIS

1. *Day-haul exemptions.*—H.R. 8249 (Rep. Whitley) would change the existing exemption for recruitment within 25 miles and 13 weeks yearly to 50 miles and 26 weeks. H.R. 8232 (Rep. Hefner) would substitute 75 miles for 25 miles in the exemption. H.R. 8233 and H.R. 8234 (Rep. Hefner) would completely exempt day-haul operations. H.R. 8894 (Rep. Sarasin) at Section 7 would exempt day-haul except for a worker transported from and to his or her permanent domicile each work day in a vehicle under control by a contractor.

The existing exemption for 25 miles/13 week recruitment apparently excludes the person who supervises students in a local harvest for a few weeks during the summer. To expand this exemption would deny protection for more regular farmworkers whose work remains insecure from day to day and who work daily at the whim of a crewleader. They often are transported considerable distances from their place of residence to an unseen work site to encounter low wages, miserable working conditions and misrepresentation in the terms of employment.

To expand the exception and permit day-haul activity would open the doors to probability of vast abuse in major day-haul operations in places such as Philadelphia, Pennsylvania; Memphis, Tennessee; various points in Florida; South Texas; Phoenix, Arizona and the Imperial and Salinas Valleys of California.

Protections under the 1974 amendments have corrected conditions somewhat. For example, farmworkers in Phoenix advise that day-haul contractors in that area are now registering with the Department as a result of the 1974 amendments. They did not do so prior to 1974, but today they are generally posting the terms of employment on the day-haul bus and are making proper social security deductions from worker's pay checks. Abuses do continue. For example, in one case a contractor day-hauling out of Phoenix used an unsafe bus to haul workers when the bus broke down twelve miles out of town. The contractor gave a few chosen workers a ride to the work site in his pick-up truck leaving many others to fend for themselves. These workers were forced to walk the twelve miles back to Phoenix under the summer sun when the temperature was over 100°. In that case, workers found a remedy under the Act and settled a private action against the contractor by recovery of damages. In another case a woman farmworker was recruited by a contractor in Phoenix and was hauled to the work site only to find that the grower refused to employ her; she was forced to remain in the contractor's bus the entire day without water or sanitation. She too was fortunate enough to find an attorney and to pursue a private remedy for damages under the Act. While these abuses continue, at least the Act provides some enforcement remedy. Without the Act such workers would have no remedy at all.

Congress earlier heard about day-haul operations to sites 100 miles or more from the place of the worker's residence in states such as Florida and Texas. Abuses by day-haul contractors include fraudulent recruitment, failure to make social security deductions, failure to provide any pay records whatsoever, the failure to provide toilet, sanitation facilities or drinking water, the employment of chldren below the legal age, arbitrary dismissals and blacklisting at the work site, absence of any first aid services, and substandard vehicles would break down and force the workers to walk miles to their homes. (Hearings before the Subcommittee on Agricultural Labor, Committee on Education and Labor, November 9, 1973, pp. 100, 165, 174; hearings before the Senate Subcommittee on Employment, Poverty and Migratory Labor, February 8 and April 8 and 9, 1974, pp. 39, 42, 232, 249.) Congress had abundant evidence of the need to subject day-haul operations to the protections of the Act. Conditions have not improved since 1974, and those protections must not now be eroded.

2. *Grower associations.*—H.R. 889 (Rep. Sarasin) Sections 2 and 6 and H.R. 10053 (Rep. McFall) Section 4, and H.R. 10631 (Rep. Ireland) Section 2 and Section 6 would exempt growers' associations and agents thereof.

A contractor who is paid salaries and commissions by a cooperative is the functional equivalent of an independent contractor, especially when he recruits simultaneously for multiple employers. The merely nominal difference between a contractor operating for a cooperative, and a contractor operating "independently" does not support a difference in legal treatment. The unscrupulous person works the same abuses whether working for one grower or an association of them.

The potential for abuse of farmworkers increases under a cooperative recruitment arrangement. Where a contractor recruits for several growers at once, the contractor has an incentive to over-recruit, anticipating a need to shuffle workers among different growers and different crops on an "as needed" basis. These needs create situations ripe for fraudulent recruitment with respect to the terms and conditions of employment.

For example, the federal court in California in the case of *El Comite de Campesinos* v. *S. P. Growers Association* has held a growers association of more than 130 members subject to coverage under the Act. That the association might be considered "non-profit" for tax purposes could not eclipse the fact that it is run exclusively for the direct economic benefit of its members. The court found that the growers pay into the cooperative sums sufficient to cover all the expenses of running an office, to engage in widespread recruitment of workers, to compensate personnel other than migrant laborers and to supply members with trucks and farming equipment and to pay for field supervisors. That case awaits trial on extensive allegations that the association failed to disclose the material terms of employment to farmworkers and a practice of the hiring of undocumented workers while a strike was in progress.

Another action is pending against the Arizona Citrus Corporation, a cooperative marketing association which recruits and employs workers for the citrus harvest of its 90-member growers. The complaint alleges that the defendant association (a) pays plaintiffs and other farmworkers at rates below the minimum wage; (b) credits plantiffs' social security deductions to ficticious social security numbers, leaving workers unable to determine the status of their FICA contributions; (c) fails to keep accurate payroll records and (d) maintains a labor camp in violation of numerous federal and state sanitation laws. Arizona Citrus—which pays its recruited workers directly—and S. P. Growers—which pays workers through its members—are trade associations conducting massive recruitment for the direct economic benefit of members. Both offer potential for abuses which the Act is designed to avoid.

3. *Eliminating "personally" from the existing exemption for recruitment personally by an employer.*—H.R. 10053 (Rep. McFall) Section 2 and H.R. 8894 (Rep. Sarasin) Section 3, and H.R. 10631 (Rep. Ireland) Section 3 would strike the word "personally" from Section 3(b)(2) of the Act. The proposal would exempt any agribusiness corporation or its agents from coverage.

Suggested rationales for the statutory exemption of personal recruitment by an agricultural employer include (1) the farmer who personally recruits workers will exercise personal responsibility towards them; (2) such a farmer can avoid confusion in the description of employment terms more easily than in recruitment through an intermediary; and (3) personal recruitment conducted by a family farmer whose season is short and whose labor force is small poses relatively few labor problems. Under Departmental interpretation, the same small farmer does not loose his exemption for personal recruitment should he chose to adopt the corporate form of ownership, where the corporation remains under the effective control of an individual whose authority is equivalent to that possessed by a sole proprietor (Wage-Hour Opinion Letter of October 3, 1977).

The rationales suggested above do not extend to the agribusiness corporation, which tends to recruit through intermediary agents and over considerable distances. For example, a federal district court in Minnesota last November denied the motion of defendant Owatonna Canning Company for dismissal in an action filed against it under the Act. The corporation allegedly employed 1,500 farmworkers over three years. The complaint alleges FLCRA violations by two fulltime officers of the grower corporation, including misrepresentation of the terms of employment, which forced the workers to work 12 hours a day 7 days a week without overtime pay at wages below the legal minimum, absence of adequate pay records, short changing on plaintiff farmworkers' pay slips and employment of children in the fields under the age of twelve. The farm labor housing provided by the corporation was allegedly to be so unsanitary that it caused eye infections and contagious diseases and that its drinking water was so contaminated as to cause illness to the workers' children. (*Cantu* v. *Owatonna Canning Co. Inc.*, D. Minn. No. 3–76–CIV 374.)

The United States District Court for the Central District of California entered judgment last fall against a packing corporation. The court rejected the defendant's contention that it was a legal "person" and thus entitled to the exemption under Section 3(b)(2) of the Act and enjoined the corporation from further violations of Section 6(b) (failing to disclose to workers the material terms and conditions of employment) Section 6(c) (failing to post a written statement of the conditions of employment), and Section 6(d) (failing to post the terms and conditions of occupancy of housing facilities provided to workers). (*Marshall* v. *Souza Brothers Packing Co.*, No. CV–77–2353–R.)

The very magnitude of an agribusiness corporation causes it to recruit farmworkers in the largest numbers, over the largest area, and through the greatest number of intermediaries. The rationale behind the exemption for personal recruitment by a small farmer simply has no applicability to the large corporate scene.

4. *Exemption for regular employees.*—H.R. 10053 (Rep. McFall) Sections 3 and 6 and H.R. 8894 (Rep. Sarasin) Sections 4 and 8 would create an exemption for a full-time employee or a person employed on a seasonal basis who engages in such activity solely for his employer. H.R. 10631 (Rep. Ireland) Sections 4 and 6 creates a similar exemption for recruitment occurring within 100 miles of the work site.

The fundamental weakness in this proposal is its attachment of legal consequences to purely formal distinctions between an alleged "independent" farm labor contractor and an alleged "employee" crewleader. The use of either label turns not on functional distinctions but on custom which varies from region to region, from crew to crew and even within a crew from day to day. For example, in many parts of California a contractor is paid solely on a percentage of what the workers in his crew earn during a harvest: he bears no economic risk, furnishes no equipment, does not have the final authority in hiring and firing and bears most badges of an employee despite his nominal status as an independent contractor. Conversely, many midwestern agribusiness corporations maintain "employees" who are given nearly total autonomy to recruit a crew in a home-base state, transport the crew, house it, and supervise it.

Two pending cases in Texas will illustrate the point. Both cases involve large midwestern growers maintaining crewleaders on their payrolls who seek an exemption under the "incidental basis" test. Both cases involve substantial violations of the Act through overrecruitment and failure to disclose the material terms and conditions to the workers recruited. In one case, the farm labor contractors had been employed exclusively by the grower for the past six years, even though the contractors spent the winter in Texas raising a crew and spent virtually all of their payroll time performing the traditional functions of crewleaders. In the other case, a company foreman spends most of his time with the grower company in the midwest and comes down to Texas in the spring to recruit on-the-spot. Both cases involve serious allegations of violations under the Act which would go without a remedy under the proposed exemption. In the Salinas Valley of California a farm labor contractor acting "independently" was enjoined from engaging in contracting activity where he had failed to disclose to workers the material terms of employment, had transported workers in unsafe and unlicensed vehicles, and had committed other violations of the Act. The very next day following this injunction the same contractor was back in the same fields posing as an "employee" of the same growers. The Department of Labor intervened and ultimately was successful in enjoining the contractor from activity under such a ruse. The proposals before the Subcommittee would hamstring effective enforcement of the Act by invoking a formal and unhelpful distinction.

5. *Substitute insurance provisions.*—H.R. 10631 (Rep. Ireland) Section 7, apparently would permit a farm labor contractor to satisfy the Act's insurance requirements through proof of vehicle liability insurance coverage under state workers' compensaton law.

The Act's vehicle insurance requirements reference the requirements of the Interstate Commerce Commission and are not exhorbitant. Under going rates in Florida, for example, a contractor operating a 40-passenger bus would expect to pay slightly less than $100 per month for insurance which conforms to the Act. This distills to approximately $4 premium cost per working day. A contractor typically receives a commission of 15 percent of a worker's wages which, for a worker at minimum wage for 10 hours a day would approximate $4. A premium which equals the commission from a single worker to provide decent coverage for a bus load of 40 or more workers is reasonable by any standard. Moreover, Section 5(a)(2) of the Act permits the Secretary to relax insurance requirements upon a showing by contractors that insurance at statutory levels is not realistically available. Any such evidence if it exists, first should be submitted to the Secretary for consideration.

Questions arise from the proposal's murky language. First, it does not explicitly provide for the Secretary to waive existing insurance requirements; rather, it states only that where proof of liability insurance is provided pursuant to a workmen's compensation policy that the *policy shall conform to exclusive remedy provisions of state law*. Second, the proposal does not state at what levels workers' compensation insurance benefits shall be secured. Third, benefit levels are inadequate. For example, California's workers' compensation program limits vehicle insurance to $15,000 for bodily injury or death to one person and $30,000 for bodily injury or death to all persons in a single accident, and is inadequate to cover injuries from serious bus accidents. The 1973 incident in Blythe, California, in which an old bus driven by a farm labor contractor resulted in the deaths of nineteen farmworker passengers, is an unhappy reminder that such concerns are far from fanciful. Fourth, the proposal does not account for the patchwork in coverage variations from state to state. Whether or not an employee is acting within the scope of his employment when he is "going and coming" to and from the work site is subject to a myriad of rules and exceptions under various state workers' compensation programs. Similarly, each state has developed separate rules governing workers' compensation coverage for injuries occurring in employment outside the state. For example, our preliminary research suggests that Florida worker's compensation does not cover out-of-state injuries where the contract of employment, made in Florida, was expressly for services to be rendered exclusively outside the state.

6. *Diversion of crew from one grower to another.*—H.R. 10810 (Rep. Stockman) would exempt recruitment by a farmer on behalf of another farmer within 25 miles for his permanent place of residence. H.R. 10053 (Rep. McFall) Section 2. H.R. 10631 (Rep. Ireland) Section 3, H.R. 8894 (Rep Sarasin) Section 3 would exempt contracting activity by a grower or a corporation involving farmworkers in the planting, cultivating, or harvesting of crops to be grown. processed, canned, ginned, or packed in or diverted from its own operation.

The proposal by Rep. Stockman covers a wide range of possible fact situations. On the one hand it could involve a small farmer who permits his crew to work for a neighboring farmer during a down period in his own harvest. The providng farmer may receive no "fee" simply through his gratuitous diversion of workers and thus be exempt under law. On the other hand the proposal would exempt recruitment by a dominant agribusiness corporation, perhaps involved in processing in an area, which maintains a large farmworker force and parcels out the farmworker force as needed to other growers in the area. In such a case, the economic benefit which accrues to the agribusiness through stabilization of labor costs may constitute a fee and thus properly trigger registration. Resolution of such factual questions should be determined on a full record in each instance and not be subject to a blanket exemption.

The proposals in H.R. 10053 and H.R. 8894 create an even broader exemption. The exemption would apply to five or six giant corporate citrus processors in Florida, for example, which regularly buy citrus crops while the crops are in the field. The exemption would permit such a corporate processor to recruit, transport, supervise and pay the farm labor force for a multitude of growers simply on the basis that the crops collectively are expected to reach the corporate processor eventually. The exemption would shield a wide range of corporate contracting activity from coverage under the Act even though the corporation itself exercises no direct supervision of the labor force at the time the contracting occurs. Moreover, the exemption would apply even though the corporate processor eventually chooses to divert a crop without ever having processed it. This strains the meaning of an exemption "for its own operation" to unnecessarily broad extremes.

7. *Exemption for charter carriers.*—H.R. 8894 (Rep. Sarasin) Section 5, would exempt a "fully qualified charter carrier" from coverage under Section 3(b)(7).

Section 3(b)(7) of the statute currently exempts "any common carrier or any full-time regular employee threof engaged solely in the transportation of migrant workers." The apparent reason for the proposal is to extend the definition of "common carrier" to include "charter carrier" as well. We are unaware of serious conflict which has come from a denial of a common carrier exemption to a duly qualified charter carrier. Moreover, this broad definition seems appropriately addressed by the Department in interpretive regulations. In the absence of clear evidence of difficulty we see no need for a statutory amendment as proposed.

8. *Limiting definition of "transport".*—H.R. 10053 (Rep. McFall) Section 6, H.R. 10631 (Rep. Ireland) Section 6, and H.R. 8894 (Rep. Sarasin) Section 8, would limit the term "transport" which triggers coverage under the Act to the ownership or control of a vehicle or conveyance. The proposal apparently arises from a fear that an employer who furnishes a bus ticket to transport an agricultural worker to the work site may be deemed liable for damages arising out of the operation of the bus even though the employer has no control over it. Absent any evidence that such an interpretation reflects either the policy or a pattern of enforcement by the Department of Labor, his proposal does not appear ripe at this time for consideration as an amendment to the Act.

9. *Limitation of farmworkers to those on a seasonal or other temporary basis.*—H.R. 10053 (Rep. McFall) Section 5, H.R. 10631 (Rep. Ireland) Section 5 and H.R. 8894 (Rep. Sarasin) Section 7, would amend Section 3(g) of the Act by adding the phrase "on a seasonal or other temporary basis" after the reference to the Fair Labor Standards Act. The proposal would amend the Act to read as follows (insertion in italics):

"The term 'migrant worker' means an individual whose primary employment is in agriculture, as defined in Section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 203(f)) *on a seasonal or other temporary basis,* or who performs agricultural labor, as defined in Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. § 3121(g)), on a season or other temporary basis."

Two commas precede the phrase "on a seasonal or other temporary basis" in the present law. They indicate a gramatical construction in which the phrase modifies both "agriculture" as defined in the Fair Labor Standards Act and "agricultural labor" as defined in the Internal Revenue Code. As such, the proposed insertion of the same phrase earlier in the subsection would be surplusage.

10. *Deleting requirement that grower obtain contractor's payroll records.*—H.R. 10053 (Rep. McFall) Section 7 and H.R. 10631 (Rep. Ireland) Sections 8, 9 and 10 would delete the requirement that an employer obtain and maintain records from his farm labor contractor respecting the payroll which the contractor is required to keep under Section 6(e) of the Act.

The Act at Section 14 invites the cooperation of an agricultural employer in assuring that the farm labor contractor which he utilizes keeps adequate payroll records. The provision is eminently reasonable and imposes no cost or other burden on the employer. The record before this Subcommittee is replete with examples of farm labor contractors whose payroll records have been grossly inadequate, nonexistent, or short-lived. A simple requirement that the contractor provide the grower with such records and that the grower maintain them is a reasonable one and is crucial to the effective enforcement of the Act.

CONCLUSION

Existing law imposes no significant cost or burden on persons covered. In any event the law poses no impediment to any act which Congress would wish to encourage. Proponents of the pending proposals have not demonstrated that conditions have improved so dramatically in the farm labor community during the past three years that the Act's minimal protections should now be weakened. The Act is a product of rigorous examination by Congress and it merits the full and continued support of this Subcommittee.

Mr. Andrews. Who should go next.

STATEMENT OF MICHAEL R. MASINTER, FLORIDA RURAL LEGAL SERVICES, INC.

Mr. Masinter. My name is Michael Masinter.

At the outset, I, too, would like to thank the chairman and the members of the subcommittee for the opportunity to testify today.

I would reiterate what Mr. Fretz said with respect to the absence of any significant burdens. I reiterate at the outset what Mr. Fretz said with respect to the absence of any significant burden under the act.

There have been several proposals to exempt or to widen the minor exemption which now exists for the day haul workers. It is to that issue that I would like to turn at this time.

Interestingly enough, I believe that the first civil lawsuit ever initiated under the act subsequent to the 1974 amendment arose in conjunction with the abuse of day haul workers in Florida. The incident took place on December 8, 1974, which was one day after the revised act became effective, and it involved a situation which is not all that uncommon involving day haul workers in Florida, the case of *Franklin Ray* v. *Wardell Williams*.

We had a couple of farm workers who were recruited, Franklin Ray and Otis Brunson. They were recruited in Immokalee, Fla., for what was represented to be day haul work. They received no written disclosures. They were transported in an uninsured vehicle after accepting an offer to go and pick tomatoes at $16 a day. They were taken out some 30 miles from the nearest town in southwestern Florida where they worked for the day. At the end of the day, they were told that rather than their getting $16, they would get $10 for the day.

When the two workers complained that they had been offered $16 and were entitled to receive $16, the crew leader's response was to simply abandon them. They were 30 miles from the nearest town, and they were forced to walk that 30 miles. This was in December, and in Florida, there are not the most pleasant kind of weather conditions. It took them 2 days to get back to town.

They brought a lawsuit under that act and ultimately, received $1,500 in damages for what was done to them.

This act would exempt that crew leader from having to register and having to provide the kind of protections which those workers are entitled to receive under the act. I submit that the burdens are minimal, and that the benefits to the workers are great in such a situation. There is simply no record that would justify exempting day haul workers from the protections afforded by the act.

The second issue that I would like to turn to is the proposed definition, the proposals which appear in several of the bills to redefine the exemption for employees, to include employees who are regularly employed on a seasonal basis.

As I read that definition, that would effectively exempt those crew leaders who operate in Florida because many of those crew leaders come to Florida every year, and work year in and year out for the same grower for perhaps 2 or 3 months during the harvesting season. At the end of the Florida season, they may go to North Carolina or New York, and again renew a regular relationship with the farmer in that part of the country.

As those proposals are written, those crew leaders who work in that manner would no longer have to register under the act because they become regular seasonal employees of a particular farmer.

Again, we have encountered substantial abuse in that kind of situations. A crew leader who comes to mind immediately is one by the name of Harold Beaver who worked in Florida, and worked for perhaps 4 months a year for an operation known as A. Duda and Sons, Inc., in south Florida where he harvested tomatoes for them.

At the conclusion of the Florida tomato season, he went to North Carolina, and from North Carolina to New York, and he regularly worked for the same employers year after year. His practice was to pay his workers $5 a week no matter what kind of work they actually performed.

Those workers who wanted to leave were intimidated from leaving his camp. His camp was kept in deplorable condition. And the Labor Department, because of the coverage of the act, sued him to compel him to comply with the act.

He was enjoined from further violations by the act by a court in North Carolina. He proceeded to violate that injunction with some impunity, and was hauled back into court in North Carolina and charged with contempt of court. The court found him guilty of contempt of court, and fined him, and renewed the injunction that he was to no longer violate the act. He still refused to comply with the court's order, and the Department of Labor has refused to renew his license.

With the kind of exemption that is proposed today, that individual would once again be able to resume practicing as a crew leader without even having to register.

We submit that an amendment which would allow an individual to do that kind of things without fear of being held to account before the Department of Labor or the Federal courts benefits nobody.

I will be happy to answer any questions which I can. I thank you for the opportunity to testify.

Thank you, Mr. Masinter.

Mr. MASINTER. I should add that the crew leader to whom I made reference is no longer associated with the farmer in Florida, A. Duda and Sons.

Mr. ANDREWS. You have described the bill submitted by Congressman Ireland as containing a revised definition of "employee", to include a bona fide regular employee, which is defined as an employee who is regularly employed on a seasonal basis.

I believe that 8894, the bill that Congressman Sarasin is sponsoring, also would have that effect.

Mr. Causey, counsel for the subcommittee, would like to ask a question.

Mr. CAUSEY. Mr. Masinter, would that still be the case if a regular employee was defined as one who is not engaged in such activity for the purpose of supplying migrant workers for agricultural employment for which they cannot return after each workday to the community in which they reside, and (a) if it is important, or if the employer pays the wages of such migrant workers directly, and pays them by check, and (b) the employer provides workmen's compensation for such workers? Wouldn't that language close the loophole?

I think that what you are suggesting is that you are fearful that it would open up the door where this kind of employee was permitted to be exempt from the act.

Mr. MASINTER. That narrows it, but I do not think it would close it.

If I can address each of the three requirements that you mentioned in turn, as I mentioned at the outset of my statement, day haul workers are still subject to a substantial amount of abuse under the act.

The only abuse to which they are not subjected is, of course, the abuse of improper housing, but recruiting misrepresentations can still take place, and pay problems can still take place.

You mentioned, of course, the situation in which the employer pays directly by check to the worker. That is the kind of situation which existed at A. Duda and Sons, the farm to which I referred.

The problem was that the farm was isolated, that the workers had no place to cash their check. The only individual who could cash the check for the workers was the crew leader, and the crew leader, in fact, required the endorsement of the check and handed the worker a $5-bill.

It was discovered and revealed that all of the checks which were issued to that crew were ultimately endorsed by that crew leader, so the check was signed over to the crew leader; he handed them a $5-bill, and then the checks became his checks so that the abuse continues notwithstanding the direct payment by check.

Mr. ANDREWS. Nevertheless, I believe that would exclude the illustration you gave in which the crew leader may recruit people in Florida, then work for a particular grower in Florida, say for 3 months, and then move to North Carolina for 2 or 3 months for employment, and get on elsewhere for some 2 or 3 months.

I believe that those employees, at least, would not be exempted from the act by this inasmuch as it says that they must be in a position to return to their residence at the time of the original employment with that crew leader.

Certainly, if they were in North Carolina or further north, they would not be returning to their original base in Florida, and hence, they would not be covered by these bills.

Mr. MASINTER. If they were to leave the State to go someplace where they were employed, and stay in labor, in a plant, or a regular place, they would no longer be excluded, but at least, considering the time for Florida, which would be 3 or 4 or 5 months, if the crew leader picked them up in the morning and brought them back in the evening, the crew leader would no longer have to register.

Mr. ANDREWS. I want to ask you a question, both those of you who were here yesterday who represent, basically, the growers, and you, today.

Let me, please, say that I have no final conclusion as to what I should do, or what this subcommittee should do. We are trying to learn.

I want to probe and test against all of the conditions that are made known so as to get both sides.

Now, the argument seems to be made over and over, that if the employee is not really free to leave, if, in fact, he is in North Carolina or Mississippi, and his home base and his family, in Florida, he needs some extraordinary protection. But if he is being picked up by bus to travel some 20 miles, or 30 miles from his home to a place of employment that is agricutural, is he disadvantaged any more than the local chair factory worker who is also being picked up and carried to work at some place of employment, and who, at that place of employment, is not treated well, or paid as he understood? We do not have a Federal law for that.

In other words, the agricultural worker can quit work in that community, just as any other citizen who works for anybody else.

Why do we need a Federal act explicitly and only for agricultural workers in a community, as long as they are working just in their own community, like others?

Mr. MASINTER. Perhaps both of us should respond to that. For one reason, there is no documented record of abuse by employers of grocery stores and the supermarkets, whereas there have been presented to the subcommittee in the past repeated records of incidents in which the day haul agricultural workers were subjected to that kind of abuse.

I think what we have is a record which suggests that conditions of the day haul agricultural workers are somewhat unique, and they encounter abuse which simply is not present in other parts of our economy.

Mr. FRETZ. Ms. Hill can also elaborate in her testimony which is being offered to the subcommittee from her personal experience.

I would also add, Mr. Chairman, that I think there are two or three factors which tend to differentiate the day haul migrant workers from other classes of workers.

One is an example that comes out of Phoenix, Ariz. It is an extensive day-haul site. This is helpful. The farm workers who are in Phoenix, oftentimes come to Phoenix from southern California, out of Arizona, Mexico.

Mr. ANDREWS. We are not talking about that.

Mr. FRETZ. The point I am making is that they come to Phoenix to reside there for 6 months or so to do day haul work. They come with the expectation of doing farm work, and there is no other work.

If things cannot, or do not work out, they cannot go to work at a gas station. Many of them do not speak English, and they are simply untrained. Because of the low level of skills, there is virtually no transfer of job activity.

The second problem is that because of the unique nature of the day haul operations, any worker who starts asking questions, or starts complaining, or starts asserting the minimal rights provided under the act is subject to get on the black list.

The crew leaders are working together, and they can identify the workers who are corresponding, asking questions, and they become known as troublemakers easily. Then the workers do not get a job in any portion of the act.

The third factor is that workers are hauled over considerable distances, about 80 or 90 miles, and there are cases, litigated cases which were resolved in favor of farmworkers out of Arizona last year where the workers who were recruited were taken to the day-haul site which was many, many miles from town, and they were not given a ride back. There was a bus breakdown, and the workers were not provided with any transportation. The boss would decide that he would not want to employ the workers, and then the workers would have to sit in the bus under the July sun.

And because of those factors, I think that we have a considerably different situation from the rest of the labor market.

I would like to defer to Ms. Hill.

Mr. ANDREWS. I am inclined to somewhat agree. I suppose that, in my area, people who are day-haul workers, as many are, and people who work in poultry dressing plants perhaps have some disadvantages over the people who work at the grocery store. I think it is a matter of degree.

Yes, I would tend to agree with you, that agricultural workers * * * and probably, the statistics are per thousand * * * suffer more disadvantages of employment, than does the average worker in the community. And I surely would be inclined to think that the person who went up from Texas to Phoenix for only a temporary time, even though he or she might establish residence there, should be treated, more or less, as such.

He may not be a migrant worker, strictly speaking, but I get your point. He does not have any permanence. He is only there temporarily. I think that the people who spoke yesterday would agree with you on most of that.

I think they are talking about a situation where the person in Florida is, in fact, a full-time employee. What the definition should say is, "Reside with no present intention of leaving."

If a person goes to Phoenix for 6 months, and he intends to go to Texas at the end of 6 months, one would concede that that person is not a local resident. He would not be working permanently. The crew leader is not a permanent resident of Phoenix in your illustration.

I do not think that anybody is trying to exclude that person, or that crew leader from that act. This is not the illustration about which they are talking. They are talking about an instance wherein the employer-employee is not there temporarily.

He is at home where, presumably, he was born and reared. That is his home, and he has the option to seek work in agriculture, or any other industry that is in the community. He has the freedom of choice of leaving any crew leader or employer, or any one industry, and going to another one. That is the type of worker which, I believe, they are seeking to exempt.

[The prepared statement of Mr. Michael R. Masinter, director of litigation, Florida Rural Legal Services, follows:]

PREPARED STATEMENT OF MICHAEL R. MASINTER, DIRECTOR OF LITIGATION, FLORIDA RURAL LEGAL SERVICES, INC.

Mr. Chairman and members of the Subcommittee, Florida Rural Legal Services, Inc. greatly appreciates the opportunity to present its views and the views of its clients on the several proposed amendments to the Farm Labor Contractor Registration Act. Florida Rural Legal Services, Inc. is a non-profit legal services program operating in Central and Southern Florida, which provides civil legal assistance to migrant and seasonal farmworkers throughout Florida. As much as any other piece of legislation, the Farm Labor Contractor Registration Act directly affects the daily lives of migrant and seasonal farmworkers. The proposed amendments would greatly undermine the protection afforded by the Act, exposing domestic farmworkers to renewed abuse.

The history of abuse which led to the enactment of the Farm Labor Contractor Registration Act in 1963 and its subsequent amendment in 1974 is thoroughly documented. Underlying the Act is the recognition that, absent federal regulation, that abuse will continue unchecked. The Subcommittee should therefore view with great skepticism any proposal to weaken the coverage of the Act.

At the outset, it is well to remember that the Act imposes no significant costs upon those who must register. Those covered by the Act merely must make written disclosures regarding wages, working conditions, transportation, housing, charges for services, labor disputes, and kickback arrangements; post certain information relating to working conditions; maintain and distribute wage records; refrain from employing illegal aliens; promptly pay monies when due; refrain from imposing exclusive purchase requirements; refrain from engaging in fraudulent recruiting practices; and refrain from discriminating against workers who file complaints under the Act. The requirements of the Act are in no way burdensome, and merely serve to assure that those who must labor in the field can do so with full knowledge of the conditions which affect their employment.

Given that an honest farm labor contractor can easily and inexpensively comply with the Act, one wonders why there are so many proposals to weaken the legislation. Perhaps those who wish to weaken the legislation do not wish to be held accountable for fraudulent recruiting practices; perhaps those who wish to weaken the legislation do not wish to be held accountable for unfit housing; perhaps those who wish to weaken the legislation wish to conceal labor disputes; perhaps those who wish to weaken the legislation wish to employ illegal aliens. Whatever their motives, those who come before you to urge the weakening of the Farm Labor Contractor Registration Act do not have the interests of migrant and seasonal farmworkers at heart.

Many of the bills before the Subcommittee sound a common theme. H.R. 8232, 8233, 8234 and 10631 all effectively create an exemption for day haul recruitment. H.R. 8249 would expand the existing exemption in Section 3(b)(4) to a 50-mile 26-week exemption. H.R. 8232 would expand the exemption to 75 miles. H.R. 8233 and 8234 would completely exempt day haul operations from coverage. H.R. 10631 would exempt most crew leaders, day haul or otherwise, from coverage.

Congress previously rejected a day haul exemption for the best of reasons. Day haul operations are subject to widespread abuse; indeed, the first civil law suit brought by a private party under the amended Act was brought by two farmworkers recruited in a day haul operation. Those workers, Franklin Ray and Otis Brunson, were recruited in Immokalee, Fla., for what was represented to be day haul work. They received no written disclosures, they were transported in an uninsured vehicle, and when they completed picking tomatoes some 30 miles from the nearest town, they were informed that, rather than receiving the $16 per day that they were offered at recruitment, they would receive only $10 for their work. When they complained, the crew leader abandoned them, leaving them to walk 30 miles back to town in wintry weather. The various day haul exemptions would legalize conduct of that contractor. By virtue of the existing legislation, those two workers brought a civil law suit which they ultimately settled for $1,500.

Prior hearings before the Subcommittee on Agricultural Labor held November 9, 1973, document the widespread abuse of day haul workers; those practices have not changed, and there is simply no justification for writing day haul workers out of the protections afforded by the Act.

H.R. 8894 and 10631 are far more pernicious; they would exempt non-profit cooperative associations, and as presently drafted, would largely exempt most crewleaders. Under existing law, a non-profit cooperative which recruits for its members, is subject to coverage just as is any other individual or entity which recruits workers for a third party. Under the proposed amendment, the non-profit association becomes exempt, and those individuals who regularly recruit for a non-profit association on a seasonal basis are also exempt. What is more, both bills would exempt from registration all crew leaders who regularly recruit on a seasonal basis for any individual or entity engaged in agriculture; such an exemption amounts to virtual repeal of the Act.

Litigation under the existing law throughout the United States makes clear that cooperative associations frequently engage in unscrupulous recruiting, transportation, employment, and housing practices. Under existing law, those who would engage in such practices now must account for those practices to the Secretary of Labor and the federal courts. Those who do not engage in such practices suffer no harm under existing law. The only beneficiaries of the proposed exemptions would be those who engage in the practices presently prohibited by the Act. The proposed amendments amount to a virtual license to non-profit associations to engage in fraudulent recruiting practices, to provide unsafe transportation, to provide unfit housing, and to employ illegal aliens. In short, the bill gives those whom it would exempt the right to prey on unsophisticated and unsuspecting agricultural workers. Reason and common sense demand that the proposed exemption for non-profit cooperative associations be rejected.

The proposals to exempt a bona fide regular employee defined to be an employee who is regularly employed on a seasonal basis by any individual or entity which is itself exempt, amounts to virtual repeal of the Act. Most crew leaders operating in Florida work regularly for the same grower year after year on a seasonal basis. A few examples taken from litigation in which I have participated suffice to illustrate the dangers of this proposed exemption. Harold Beaver worked as a farm labor contractor for many years in the following manner: Each year during the fall he would come to Florida to work for A. Duda and Sons, Inc. where he would work throughout the season. Each year at the end of the Florida season, he would go to North Carolina to work for a North Carolina grower during the North Carolina season. He worked for the same growers in Florida and North Carolina year after year, and while he worked for those growers, he engaged in the most unscrupulous of recruiting and employment practices. He misrepresented to the prospective workers the terms and conditions of employment, housed them in deplorable housing, paid them $5.00 per week, transported them in uninsured vehicles, and physically threatened those who would complain. A federal court in North Carolina enjoined Harold Beaver from violating the Farm Labor Contractor Registration Act; nevertheless, the violations continued, and the same federal court found Mr. Beaver to be in contempt of the prior order. Notwithstanding the contempt judgment, Mr. Beaver continued to violate the Act, and the Department of Labor refused to renew his license. Should H.R. 10631 or H.R. 8894 pass, Mr. Beaver will again be able to operate as a farm labor contractor, as he will no longer be required to either register or comply with the Act.[1]

Elijah Fletcher, Jr. operates in much the same manner that Harold Beaver operated. Should the proposed amendment pass, he would be free to operate outside the law. Ivory Lee Wilson, a farm labor contractor recently convicted of subjecting his workers to involuntary servitude, would be free to operate again under the proposed amendments. A description of his practices appears in the decision of the United States Court of Appeals for the Fifth Circuit, affirming his conviction for involuntary servitude; a copy of that decision is appended to this statement. Surely Congress does not wish to create such an exemption.

Both H.R. 8894 and 10631 would create an exemption for corporate employers by striking the word "personally" from the farmer's exception under the Act. Earlier testimony before the Subcommittee on Migratory Labor on May 14, 1973, documented the abusive practices of corporate employers. Those practices continue today, and thus there is no basis for creating the exemption which the two bills would create.

To complete their virtual repeal of the Act, H.R. 8894 and 10631 would define "fee" as profit. Such a definition invites those who would abuse workers to avoid registration through accounting legerdemain. The effect would be to impose intolerable burden of proof on either the Secretary of Labor or an aggrieved farmworker who seeks to enforce the Act. The courts have given a reasonable definition to "fee", and accordingly, there is no reason to amend existing law.

H.R. 10631 adds a new twist in its effort to demolish the protections afforded migrant and seasonal farmworkers under existing law through its attempt to link the vehicular insurance requirements to Workmen's Compensation. While the intent of the bill is not clear, it would appear that its effect would be to require that the policy of vehicle insurance which a crew leader obtains include a clause providing that the insurance is not effective in any accident which would otherwise be covered by Workman's Compensation. The proposed legislation exposes workers once again to all manner of unsafe transportation, and should be rejected.

If H.R. 8894 or 10631 is enacted, the Farm Labor Contractor Registration Act will become a net which only catches small fish. We therefore urge the Subcommittee to reject both H.R. 8894 and H.R. 10631 and to also reject all of the proposed exemptions for day haul workers.

Thank you very much.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

WILLIAM JAMES BIBBS, IVORY LEE WILSON, AND ROSCOE WILSON, DEFENDANTS-APPELLANTS

No. 76-4195

United States Court of Appeals, Fifth Circuit.

December 19, 1977.

Defendants were convicted in the United States District Court for the Middle District of Florida, William Terrell Hodges, J., of holding certain persons to involuntary servitude and they appealed. The Court of Appeals, James C. Hill, Circuit Judge, held that: (1) the evidence was sufficient to sustain the convictions; (2) there was no requirement that a defense witness be confronted with an inconsistent statement made subsequent to her testimony, and (3) the district court did not abuse its discretion in excluding evidence of the named victims' and witnesses' criminal convictions more than ten years old.

Affirmed.

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[1] A. Duda & Sons, Inc. terminated its relationship with Mr. Beaver after the 1975–76 Florida season.

1. Slaves

In prosecution for involuntary servitude, law takes no account of means of coercion, but various combinations of physical violence and threats of physical violence for escape attempts are sufficient. 18 U.S.C.A. § 1584.

2. Slaves

Defendant is guilty of holding person to involuntary servitude if defendant has placed him in such fear of physical harm that victim is afraid to leave, regardless of victim's opportunities for escape. 18 U.S.C.A. § 1584.

3. Slaves

Evidence was sufficient to sustain convictions of holding persons to involuntary servitude. 18 U.S.C.A. § 1584.

4. Criminal Law

Trial courts have wide latitude in ruling on evidentiary questions.

5. Criminal Law

In prosecution for holding persons to involuntary servitude, admission of prosecution rebuttal testimony offered to impeach both credibility of key defense witness and her testimony concerning relevant factor of victims' employment was not plain error.

6. Witnesses

In order to impeach witness by use of inconsistent statement made subsequent to her testimony at trial, it was not necessary that witness be first recalled and confronted with subsequent inconsistent statement. Federal Rules of Evidence, rule 613(b), 28 U.S.C.A.

7. Witnesses

Practice of requiring foundation to be laid during cross-examination of witness to be impeached has three objectives: to avoid unfair surprise by giving opposite party opportunity to draw denial or explanation from witness or redirect examination; to give witness himself opportunity to deny or explain apparent discrepancy; and to save time. Federal Rules of Evidence, rule 613(b), 28 U.S.C.A.

8. Criminal Law

In prosecution for holding persons to involuntary servitude, in which defendants asserted that district court should have permitted them to introduce evidence concerning victims' and witnesses' criminal convictions more than ten years old because victims' character and condition of life, including their prior criminal activities, were relevant in determining whether they were held to involuntary servitude by threats of beatings and the like, trial judge's refusal to admit evidence of convictions more than ten years old concerning witness who was not held to involuntary servitude was reversible error only if it was plain error affecting substantial rights. Fed. Rules Crim. Proc. rule 52(b), 18 U.S.C.A.

9. Slaves

Witnesses

In prosecution for holding persons to involuntary servitude, district court did not abuse its discretion in excludng evidence of named victims' and witness' criminal convictions more than ten years old, Federal Rules of Evidence, rule 609(b), 28 U.S.C.A.

Stanley M. Lane, Tampa, Fla. (Court-appointed), for Bibbs.

Robert E. Puterbaugh, Clinton A. Curtis, Lakeland, Fla., for Wilson.

Jack T. Edmund, Bartow, Fla., for Roscoe Wilson.

John L. Briggs, U.S. Atty., Jacksonville, Fla., Walter W. Barnett, Vincent F. O'Rourke, Attys., Drew S. Days, III, Asst. Atty. Gen., Dept. of Justice, Washington, D.C., for plaintiff-appellee.

Appeals from the United States District Court for the Middle District of Florida.

Before THORNBERRY, Circuit Judge, SKELTON, Senior Judge*, and HILL, Circuit Judge.

JAMES C. HILL, Circuit Judge.

The defendants were convicted of holding certain persons to involuntary servitude in contravention of 18 U.S.C. § 2 and § 1584. Defendant Ivory Lee Wilson was convicted of holding Richard Lee Brown, Charles Vonzell Brown, Elliott Johnson and Thomas Bethea to involuntary servitude. Defendant Roscoe Wilson was convicted of holding Richard Lee Brown and Elliot Johnson to involuntary servitude. Defendant William Bibbs was convicted of holding Richard Lee Brown, Charles Vonzell Brown, and Elliot Johnson to involuntary servitude. On this appeal, the defendants challenge their convictions, claiming that they are based on insufficient evidence; that the trial judge improperly admitted testimony concerning an inconsistent statement made by a defense witness subsequent to her testimony; and that the trial judge improperly excluded evidence of witnesses' and victims' criminal convictions more than ten years old. We hold that these allegations of error are meritless, and we affirm the district court.

Defendant Ivory Lee Wilson was in the agricultural products harvesting business. He negotiated contracts with farmers and agricultural product packing companies in North Carolina and in Florida to harvest their crops. From November 1975 to April 1976, Wilson employed his brother, defendant Roscoe Wilson. Roscoe Wilson employed his own crew and was paid based on the amount of produce it harvested. Defendant William Bibbs also worked for Ivory Lee Wilson as a truck driver, fruit loader, field walker, and work recruiter.

Ivory Lee Wilson required his crews to live in housing that he provided. He charged each crewman $14.00 per week for housing though Wilson's North Carolina employers supplied the crewmen's accommodations free to Wilson and though nine to eleven crewmen were forced to live in a three room apartment owned by Wilson when they worked in Florida. Ivory Lee Wilson required the crewmen to eat at a camp kitchen when they were in North Carolina. He charged each crewman $30.00 per week for meals consisting of sandwiches, grits, beans, pigs knuckles, and bologna. When the crews were in Florida, Wilson permitted them to shop in a local grocery store. Wilson did not permit the crewmen to pay directly for their groceries, however, but rather Wilson paid for the goods and then charged the crewmen for them. The crewmen were required to purchase any liquor they consumed from Wilson, who sold it at what the evidence discloses to have been exorbitant prices. Wilson also charged the crewmen for items such as pickers' sacks, gloves, clippers, water, and electricity. Wilson set off all these charges against each crewman's weekly paycheck. About 70% of the crewmen did not earn enough money during at least one week to pay the charges they incurred that week. Ivory Lee Wilson required these crewmen to endorse their entire payroll checks back to him.

In November 1975, defendant Bibbs hired victims Richard Lee Brown and Charles Vonzell Brown in Salisbury, North Carolina, promising them that they would be returned to Salisbury in a few days. The Browns quickly became indebted to Ivory Lee Wilson, and they attempted to leave his employ approximately 9 days after they began working for him. Defendants William Bibbs and Ivory Lee Wilson stopped the Browns with a gun. Wilson threatened to kill them and told them that they could not leave until they paid their debts. When Richard Lee Brown attempted to escape again with victim Elliot Johnson, Roscoe Wilson found them and had Bibbs and another man beat them. Although Brown suffered internal injuries in the beating, Ivory Lee Wilson forced him to work the next morning. Brown rode to the fields with the other workers, including Charles Vonzell Brown, and told them he had been beaten for attempting to escape. The Browns testified that they remained in Ivory Lee Wilson's employ because they feared for their lives.

Victim Elliot Johnson became indebted to Ivory Lee Wilson so soon after beginning work for him that Johnson never received a paycheck. When Johnson was beaten for attempting to escape with Brown, Johnson's arm was fractured and his back was injured. Although Johnson eventually spent $400.00 in medical fees for these injuries, he went to work the next morning because he believed that he would be killed if he did not. Like Richard Lee Brown, Johnson told the other workers about his beating. Johnson testified that he did not attempt to escape again because he feared he would be physically harmed.

Victim Thomas Bethea was hired to work in North Carolina. Because he became indebted to Ivory Lee Wilson, Wilson threatened to beat him if he did not go to Florida with the crew. Bethea knew that Richard Lee Brown and Elliot Johnson had been beaten for attempting to escape, and he had witnessed Ivory Lee Wilson beat another person. Bethea was prevented from leaving the camp twice, once by defendant Bibbs, and he had been threatened with beatings. Bethea testified that he remained in Ivory Lee Wilson's employ only because he feared that he would be physically harmed if he attempted to leave.

The defendants urge that the district court erred in failing to grant a judgment of acquittal from their convictions. The defendants argue that their convictions are not supported by the evidence because each victim admitted that he had one or more opportunities to avoid continued service with the Wilsons. The defendants' argument is premised on an incorrect interpretation of the elements of involuntary servitude and ignores the standard governing appellate review of a denial of a motion for a judgment of acquittal.

[1, 2] The primary purpose for outlawing involuntary servitude was to abolish "all practices whereby subjection having some of the incidents of slavery was legally enforced." *United States* v. *Shackney*, 333 F. 2d 475, 485 (2d Cir. 1964). In a prosecution for involuntary servitude, the law takes no account of the means of coercion. Various combinations of physical violence and of threats of physical violence for escape attempts are sufficient. *Pierce* v. *United States*, 146 F. 2d 84 (5th Cir. 1944), *cert. denied*, 324 U.S. 873, 65 S. Ct. 1011, 89 L. Ed. 1427 (1945); *Bernal* v. *United States*, 241 F. 339 (5th Cir. 1917), *cert. denied*, 245 U.S. 572, 38 S. Ct. 192, 62 L. Ed. 540 (1918). To hold otherwise would be to ignore reality. During the years slavery existed in this country, slaves often worked in the fields and went into town with little direct supervision, thereby offering them opportunities to escape. Yet it is beyond argument that the slaves were held in involuntary servitude. The slaves' servitude was enforced not only by state law, but also by the fear generated by public punishment of those who attempted to escape. *See generally*, B. Quarles, The Negro in the Making of America (rev. ed. 1970). Therefore, a defendant is guilty of holding a person to involuntary servitude if the defendant has placed him in such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape.

[3] This Court must affirm the district court's denial of a motion for acquittal if, "viewing the evidence presented most favorable to the Government, a reasonableminded jury could accept the relevant and admissible evidence as adequate and sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt." *Sanders* v. *United States*, 416 F. 2d 194, 196 (5th Cir. 1969), *cert. denied*, 397 U.S. 952, 90 S. Ct. 978, 25 L. Ed. 2d 135 (1970); *Weaver* v. *United States*, 374 F 2d 878, 881 (5th Cir. 1967). In the case on appeal, the Government presented more than sufficient evidence to satisfy this standard. The evidence established that such victim held to involuntary servitude attempted to escape Ivory Lee Wilson's employ on one or more occasions and was prevented from doing so by one or more defendants. Richard Lee Brown and Elliot Johnson were beaten for attempting to escape, and all the victims were threatened with bodily harm if they attempted to escape. Charles Vonzell Brown and Thomas Bethea, the victims who were not beaten, were aware that the defendants had beaten other persons who attempted to escape. Each victim testified that he did not leave Ivory Lee Wilson's employ because he feared that he would be physically harmed by the defendants. Finally, there was ample evidence that Wilson had a motive to keep each victim in his employ, to recoup money expended on them. Therefore, we hold that the defendants' convictions are supported by sufficient evidence.

The defendants next urge that their convictions be reversed because the district court admitted evidence on rebuttal concerning an inconsistent statement made by a defense witness. Defense witness Janet Boyd testified that she served T-bone steaks to the defendants' employees twice a week. Apparently this testimony was published in newspapers. On rebuttal, Raymond Coleman testified that Boyd told him on the morning after her appearance on the witness stand that she had not so testified. The defendants argue that Coleman's testimony was irrelevant and that Boyd should have been confronted with her statement before Coleman was permitted to testify concerning it. Because the defendants raised neither objection at trial, this Court will reverse the district court on the basis of these objections only if the district court's procedure constituted plain error affecting substantial rights. Fed. R. Crim. P. 52(b); *United States* v. *Garcia*, 531 F. 2d 1303, 1307 (5th Cir.), *cert. denied*, 429 U.S.

941, 97 S. Ct. 359, 50 L. Ed. 2d 311 (1976) ; *United States* v. *Fendley*, 522 F. 2d 181, 186 (5th Cir. 1975).

[4, 5] Trial courts have wide latitude in ruling on evidentiary questions. *United States* v. *Partin*, 493 F. 2d 750, 759 (5th Cir. 1974) ; *O'Brien* v. *United States*, 411 F. 2d 522, 524 (5th Cir. 1969). In the defendants' reply brief, they refer to Janet Boyd as "a key defense witness" and state that her testimony "offered invaluable support to the defense."[1] The defendants introduced Boyd's testimony pertaining to the steaks to refute the Government's evidence concerning Wilson's exorbitant food charges and concerning the victims' work conditions. Coleman's testimony was offered to impeach both the credibility of this "key defense witness" and her testimony concerning a relevant factor of the victims' employment. Therefore, the trial judge's failure to exclude this evidence sua sponte on the basis of irrelevancy was not plain error.

[6] To support their argument that Boyd should have been recalled before Coleman testified, the defendants rely primarily on Rule 613(b) of the Federal Rules of Evidence, which establishes the procedure for impeachment of a witness by the witness' prior inconsistent statements, and on other authorities concerned with impeachment by prior inconsistent statements. This reliance is misplaced for two reasons. First, Rule 613(b) expressly applies only to prior inconsistent statements. Because the Federal Rules of Evidence do not provide a procedure for impeachment by subsequent inconsistent statements, the trial judge is free to fashion an evidentiary procedure that will "secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." Fed. R. Evid. 102.[2] *See also* Fed. R. Crim. P. 2. Therefore, the district court was in no way bound by Rule 613(b) or by related authority.

Second, even if Rule 613(b) was applicable, it does not require that impeachment foundation precede the impeaching witness' testimony. Rule 613(b) merely requires that the impeached witness be "afforded an opportunity to explain or deny" the inconsistent statement. The Committee Comments to Rule 613(b) expressly state that the impeached witness's opportunity to deny or explain should not be limited to cross-examination.

[7] The traditional practice of requiring a foundation to be laid during cross-examination of the witness to be impeached had three objectives: (1) to avoid unfair surprise by giving the opposite party an opportunity to draw a denial or an explanation from the witness on redirect examination; (2) to give the witness himself an opportunity to deny or to explain the apparent discrepancy; and (3) to save time. The first and second objectives can be achieved by giving the witness an opportunity to explain or to deny a prior or a subsequent inconsistent statement at any time during the trial. The third objective, to save time, is relevant in the context of impeachment by prior inconsistent statements. The Committee Comments state, however, that even that objective is outweighed by counterveiling considerations. Because counsel cannot lay a foundation for impeachment during cross-examination in the context of impeachment by subsequent inconsistent statements, the objective of saving time has even less significance in that context. *United States* v. *Barrett*, 539 F. 2d 244, 254–56 (1st Cir. 1976) ; *Strudl* v. *American Family Mutual Insurance Co.*, 536 F. 2d 242, 244–45 (8th Cir. 1976) ; *Hearings Before the Subcomm. on Criminal Justice on Proposed Rules of Evidence*, 93d Cong., 1st Sess., ser. 2. at 74–75 (Supp. 1973) ; 3 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 613[02] (1975). The defendants in the case on appeal could have requested that Boyd be permitted to testify in surrebuttal or that their case be reopened. *United States* v. *Webb*, 533 F. 2d 391, 395 (8th Cir. 1976) ; *United States* v. *Sadler*, 488 F. 2d 434, 435–36 (5th Cir).), *cert. denied*, 417 U.S. 931, 94 S. Ct. 2642, 41 L. Ed. 2d 234 (1974) ; *United States* v. *Doe*, 488 F. 2d 93, 94 (5th Cir. 1973), *cert. denied*, 416 U.S. 991, 94 S. Ct. 2400, 40 L. Ed. 2d 769 (1974). Therefore, the Government's failure to recall Janet Boyd before introducing evidence concerning her subsequent inconsistent statement was not a reversible error.

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[1] Consolidated Reply Brief of Defendants-Appellants at 5.

[2] Rule 102 was designed to allow "expansion [of the Federal Rules of Evidence] by analogy to cover new or unanticipated situations." Statement of Professor Cleary, Reporter for the Advisory Committee, *Hearings on Proposed Rules of Evidence Before the Subcomm. on Criminal Justice of the House Comm. on the Judiciary*, 93d Cong., 1st Sess., ser. 2, at 4 (1973).

[8] The defendants' final argument is that the district court erred by applying Rule 609(b) of the Federal Rules of Evidence to exclude evidence of the the named victims' and witnesses' criminal convictions more than ten years old. The defendants argue that the district court should have permitted them to introduce evidence concerning these convictions because a victim's character and condition of life, including his prior criminal activities, are relevant in determining whether that person was held to involuntary servitude by threats of beatings and the like. Although the defendants attempted to question several government witnesses concerning convictions more than ten years old, the defendants did not apprise the trial judge of any purpose for these questions other than impeachment until they attempted to question the final government witness. Because the defendants were not convicted of holding the final government witness to involuntary servitude, the trial judge's refusal to admit evidence of convictions more than ten years old is reversible error only if it was plain error affecting substantial rights. Fed. R. Crim. P. 52(b) ; *United States* v. *Garcia*, 531 F. 2d 1303, 1307 (5th Cir.), *cert. denied*, 429 U.S. 941, 97 S. Ct. 359, 50 L. Ed. 2d 311 (1976) ; *United States* v. *Fendley*, 522 F. 2d 181, 186 (5th Cir. 1975).

Rule 609(b) provides that evidence of a conviction is not admissible to impeach a witness if more than ten years have elapsed since the date of the conviction or since the date of the witness' release from confinement for that conviction, whichever is later. Convictions more than ten years old may be admitted, however, if the trial court determines, "in the interests of justice," that the probative value of the convictions outweighs their prejudicial effect.[3] In enacting Rule 609(b), Congress intended that trial judges be extremely cautious in admitting evidence of remote convictions. According to the Senate Judiciary Committee, "convictions over 10 years old will be admitted very rarely and only in exceptional circumstances." S. Rep. No. 1277, 93d Cong., 2d Sess. 4, *reprinted in* 1974 U.S. Code Cong. & Admin. News, pp. 7051, 7062.

[9] The trial court in the case on appeal properly could have determined that the prejudicial effect of the convictions older than ten years outweighed any probative value they might have. It is questionable whether a person convicted of a crime or released from confinement at such a remote time is less frightened by threats of physical harm than a person who has never been convicted of a crime. Additionally, the defendants' attempts to question witnesses as well as named victims concerning convictions more than ten years old indicate that the defendants original objective at trial was to impeach the Government's witnesses rather than to introduce evidence concerning an essential element of involuntary servitude. Therefore, the trial court's refusal to permit cross-examination concerning convictions more than ten years old was not plain error.

AFFIRMED.

Mr. ANDREWS. All right then. Who is next?

STATEMENT OF BILL HARRINGTON, FARM LABOR SERVICE CENTER, PHILADELPHIA, PA.

Mr. HARRINGTON. I am with the Farm Labor Service Center in Philadelphia. My name is Bill Harrington. We work throughout the year with the day-haul population, the day-haul operation. We work with the residents who work seasonally, but are residents year-round, generally, in the Philadelphia area, the residents living in the Philadelphia area, in New York, and in New Jersey.

I am a representative of the National Association of Farmworker Organizations.

I have a short prepared statement that I would like to paraphrase, if I could.

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[3] For a conviction more than ten years old to be admissible, the proponent also must give the adverse party advance written notice of his intent to use that evidence. We need not consider this requirement of Rule 609(b) because we uphold the district court's finding that the prejudicial effect of the convictions outweighed their probative value.

The committee, in the past, has heard much about the plight of the farmworkers, and FLCRA was established, essentially, as a means of combating the different kinds of abuses, among them being the fact of the crew leaders lying about wages and working conditions in order to recruit workers; transporting workers in dangerous and uninsured vehicles; failing to provide promised housing, or providing substandard, unsanitary housing; paying workers in cash without providing and maintaining records of hours worked and taxes and social security withheld—things like that.

Withholding deductions for taxes and social security from pay without submitting them to the appropriate Federal agencies.

Operating a company store, and making unitemized and false deductions from workers' paychecks for purchases.

Charging prices for food, alcohol, gloves, et cetera, which may be double or triple their open-market value.

Keeping workers in involuntary servitude by creating indebtedness and/or by threat of violence.

It is our feeling that these things are going on now in spite of the passage of FLCRA and in spite of its enforcement.

What I would hope to show from my testimony and that of Charlotte Hill, who is with me on the left, who has been, until recently, a day-haul worker in Philadelphia, and Leroy Tyler who, until recently, was a migrant farmer in Gettysburg, is that these things are still going on in spite of the passage of FLCRA.

The amendment that is being proposed would open some large loopholes in FLCRA, particularly in several different areas.

One: The expansion of the 25-mile radius for coverage to 50 or 75 miles, as has been proposed, would eliminate the 4,000 or 5,000 farmers, day-haul farmers in the Philadelphia area from coverage if initiated. That interstate restriction was dropped, as I believe it has been proposed in one case.

The other case, permitting the dropping of the word "charitable" from the definition of exempt organizations which would perform nonprofit activities to perform through the leader activities. This would permit any moderately sophisticated crew leader or grower who wished to circumvent the act to do so with very little trouble.

Moreover, the expanded definitions, or the dropping of the definition of the word "personally" from the definition would expand the definition of "family farm" to such an extent that it would almost, or it could very well exclude many of the crew leaders currently operating by excluding from coverage any incorporated farmer, processor, canner, package operator, or any full-time crew leader who recruits for a single employer. It would have the same effect.

This, I think, is going far beyond the exemptions that were originally anticipated in the passage of the act, and its amendments would open up Pandora's box of potential abuses.

I think that what we have here is a situation in which we are trying to prohibit certain kinds of activity that we find not desirable, and in making exemptions, we are limiting the amount of persons who are covered on their activity and it, essentially, seems to have the effect of gutting the bill in many cases.

Going further, the limiting requirement that growers keep records on farmworkers would have the effect of further curtailing whatever enforcement efforts FLCRA undertakes. My testimony includes some data showing that their efforts are at a minimal at the present time.

I think that the testimony of the gentleman from the Department of Labor yesterday indicating that it would take 7½ staff years for the enforcement of the act across the Nation, I think, indicates the severity of that situation.

The taking away the burden of maintaining payroll records from the employer would prohibit even what activity, enforcement activity DOL is currently doing to circumvent the problems, but because there would be a lack of traceable evidence, that would link up the crew leader with a particular employer.

This is crucial at the present time because in most cases, there is no evidence that the worker ever received any pay at all. The worker is generally paid in cash.

In conclusion, we would urge that any action taken by the committee would be done only after the enforcement mechanisms have been strengthened either through increased appropriations, or perhaps through some kind of legislative change in the act, but it is our feeling that it is far too early, the act is far too young, and our experience is far too short to broaden these exemptions in such a wide manner based on the experience that we have had.

[The prepared statement of Mr. Bill Harrington, National Association of Farmworker Organizations, follows:]

PREPARED STATEMENT OF BILL HARRINGTON, FARM LABOR SERVICE CENTER, PHILADELPHIA, PA.

Mr. Chairman and Members of the Committee: I am Bill Harrington of the Farm Labor Service Center in Philadelphia. I am here today on behalf of the National Association of Farmworker Organizations (NAFO) which represents farmworker organizations throughout the country. We thank the committee for the opportunity to present this testimony.

The plight of farmworkers is a matter of record, as is the role of the crew leader who has substantial power over virtually every aspect of the farmworker's life. Documented abuses of this power include:

1. Lying about wages and working conditions in order to recruit workers.
2. Transporting workers in dangerous and uninsured vehicles.
3. Failing to provide promised housing, or providing substandard, unsanitary housing.
4. Paying workers in cash without providing and maintaining records of hours worked and taxes and social security withheld.
5. Withholding deductions for taxes and social security from pay without submitting them to the appropriate Federal agencies.
6. Operating a company store and making unitemized and false deductions from workers' paychecks for purchases.
7. Charging prices for food, alcohol, gloves, etc. which may be double or triple their open market value.
8. Keeping workers in involuntary servitude by creating indebtedness and/or by threat of violence.

The passage of the Farm Labor Contractor Registration Act (FLCRA) in 1963, and its amendment in 1974, offered hope that there would be an end to this exploitation, but abuses are widespread today, largely because of inadequate enforcement of FLCRA.[1] Enforcement of FLCRA has been minimal at best. Of 554 FLCRA complaints filed with the Department of Labor between September 1976 and September 1977, less than half have been responded to; of 174 complaints referred to the Department of Labor by state employment agencies in that same period, only 25 have been responded to; through November 1977 less than 10 percent of Department of Labor assessed penalties have been collected.[2]

It is against this background of non-enforcement and continuing abuse that the amendments proposed in H.R. 8894 seek to *exclude* substantial numbers of labor-contractors from FLCRA regulation. The proposed exemptions are apparently based on the assumption that the activity—farm labor contracting—is not subject to substantial abuse when performed by certain types of employers. Our experience indicates that this assumption is wholly untrue.

Section 2 of H.R. 8894 would exclude any non-profit organization from coverage. The amendment creates a loophole which will inevitably be abused. Under it, a group of crew-leaders could form a non-profit cooperative whose activities would not be regulated. The crew leaders themselves could be hired by the cooperative, and as employees of the cooperative, their activities would not be covered by FLCRA.

This maneuver to escape regulation is already being tried. In Texas, there are four cases now pending in Federal District Court against organizations similar to those which would be excluded under the proposed amendments. In California there are nine cases pending before the Ninth Circuit Court of Appeals against non-profit grower organizations.[3] In each of the California cases the lower court held that grower associations were participating in labor contracting and were covered by FLCRA. Moreover, some of the above cases include allegations of substantial violations of FLCRA by the growers.

Sections 3 and 4 of H.R. 8894 would exclude from coverage any incorporated farmer, processor, canner, ginner, packing shed operator, nurseryman, and also any full-time crew leader who recruits for a single employer. This vastly expands on the present exemptions which exclude the small farmer who does not employ a crew leader, but who personally hires his or her own farm labor, and a foreman who undertakes labor contracting activity merely on an incidental basis. These exemptions are an effort to ease the bureaucratic and administrative burdens on people whose labor contracting activities are considered insignificant by Congress.

The proposed amendment changes the whole purpose of this section. Under it, any agri-business corporation, or any regular employee of a grower could contract for a farm labor without regulation. There is no reason to expect that a foreman doing full-time crew leader work is less likely to cheat or abuse farmworkers because he or she has a single employer. The legal relationship between the crew leader and the employer has little or no bearing on the treatment afforded farmworkers, and ought not to be a basis for exclusion from FLCRA. It is the *activity* of farm labor contracting which gives rise to exploitation and abuse, and it is the *activity* which requires regulation.

An exemption for processors would simply permit the processor to act as a crew leader or to hire crew leaders, and then act as a conduit providing labor to growers who would be covered by FLCRA if they undertook the same activities themselves.

As we have tried to emphasize, lack of enforcement is the most serious flaw in FLCRA today. The amendment proposed by Section 7 of H.R. 10053 would eliminate the requirements that growers keep pay records on most farmworkers. Presently, employers have only two major responsibilities under FLCRA, ascertaining that a crew leader hired has a valid certificate of registration, and maintaining all wage records concerning employees hours, wages and deductions. The record-keeping requirement is essential to effective enforcement because it provides information which can be used to check the records kept by the crew leaders. Without those records, it will be difficult to trace liability for wage violations. Even the weak record of enforcement of employer requirements under FLCRA indicates a substantial propensity among employers to avoid the record-keeping requirement.[4] Employers who have been traditional partners in the labor contractors' exploitation of farmworkers would undoubtedly prefer to maintain their state of false innocence by avoiding direct knowledge of, and perhaps responsibility for, the crew leaders' fraud. However, NAFO agrees with the Administration that the Department of Labor is not the appropriate keeper of records which are used in its own enforcement efforts. Furthermore, the proposed change would create serious problems in the case of growers who deal directly with the workers.

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[1] See addendum, U.S. Commission on Civil Rights Hearings, 1977.

[2] Source: Office of Planning Development and Accounting and Division of Farm Labor Law Enforcement, Wage and Hour Division, U.S. Department of Labor.

[3] *Usery* v. *Coastal Growers Asso.; Usery* v. *Matiligia Growers Assn.; Usery* v. *S & F Growers; El Cometa De Campesinos De SP Growers* v. *SP Growers Assn.; Usery* v. *SP Growers; Usery* v. *Ventura County Farmworkers Assn.*

In conclusion, we urge that any action taken by this Committee be directed at strengthening FLCRA and ensuring its enforcement, rather than at weakening it. Thank you again for the opportunity to testify.

EMPLOYER ASSESSED VIOLATIONS, JANUARY-DECEMBER 1977

	Hiring unregistered crew leaders	Failing to keep records
Region:		
I	0	0
II	7	0
III	1	6
IV [1]	13	30
V	8	9
VI	4	2
VII	1	1
VIII	0	
IX	1	0
X	0	0

[1] Region IV includes Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Source: Hand tabulated data provided by the Branch of Farm Labor Law Enforcement, ESA, DOC.

ADDENDUM

HEARINGS HELD IN NORTH CAROLINA BY THE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS, SEPTEMBER 1977

Testimony of Mr. Sixto Durant, paralegal investigator for Florida Legal Aid

Mr. DURANT. I am going to try to explain the situation that during the time of our investigation we have found in North Carolina.

First of all, I would like to point out the recruiting system that is used to bring crews of farmworkers to North Carolina. I have talked to workers in the many counties that I have visited. I find out that many of these people are brought to the farms from mental institutions, from local bars, or many of the people are recruited in jail. The Crew Leaders pay their fine or bond, get them out, get them drunk, lie to them about the working conditions in North Carolina, and bring them over here.

I have not seen any of these workers earn more than $10 a week. Actually in papers it says they are making $100 or $80 a week, but, after the deductions that Crew Leaders usually do, that includes the price of the high price of the wine they sell, cigarettes, whiskey, and the food they provide for the farmworkers.

You would not believe the prices that they charge, but, of course, you would not believe the conditions that the people live in in these camps. The housing situation is terrible. There is not enough room for all of the people to sleep in. In an eight by ten room more than four or five persons sleep in a small room.

Farmworkers—they have no idea where they are. They are usually brought here at night or after they have been given some wine to drink. Most of them get drunk, of course. They have no idea where they are in the camps. After they realize that they have been lied to, they have been told different stories, they want to leave the camp, but they cannot.

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[4] See data, p. 6.

First of all, they are afraid to do it. There are many situations where Crew Leaders have caught up with the people who have tried to leave the camps, and they beat them up. I have seen workers with broken arms, broken legs. They are just afraid of their bosses. They are actually here at the mercy of the Crew Leaders. They depend totally in the daily life. The Crew Leaders are the ones who provide their food, who provide the transportation from the camp to the fields to work. They have no freedom at all—whatsoever. * * *

The health of the people in the camps is something also unbelievable. In every camp that I visited, there was people sick. There is no agency—government or state agency or county—that would provide these facilities except one that is doing a wonderful job in Johnston County. They have no way to get to the clinic or to the doctor. They have no transportation. Again, they are at the mercy of the Crew Leader.

If the people are sick and they cannot work, they do not feed them. They do not give them any food to force them to go out and work. I have seen people with pneumonia in fields working. I have seen little children hungry, sick. We were able to put them in the hospital through the clinic, and because of this effort, they were provided with medical attention. Otherwise, they would have been dead.

People come to work looking for a better situation—a situation where they can afford to help their families with the income they are hoping to get in the farms, and, of course, again, after two or three months work in the fields, they find themselves in debt to the Crew Leaders. I have seen pay receipts that they get from the Crew Leaders which is only just a piece of paper saying, "You have worked." Not even the hours. But, "You have earned $100, and your deductions are $10 for Social Security."

In many cases, the farmworkers do not even have a Social Security number. In the cases that they do have a Social Security number, the Social Security deductions are not reported. The deductions continue as $40 or $50 for room and board a week. $30 or $40 in debt for wine and cigarettes.

So, at the end of the week period, they are in debt. I have seen people in debt as much as $481 to the Crew Leaders in the period of four months working every week and not receiving any money.

I can go on and say, but I think you have an idea now.

Mr. Andrews. At this point, I would like to ask Charlotte Hill to give you some of her experiences regarding the day-haul farmer in Philadelphia, keeping in mind that this is now a year-round kind of operation.

Ms. Hill.

STATEMENT OF CHARLOTTE HILL, FARM LABOR SERVICE CENTER, PHILADELPHIA, PA.

Ms. Hill. I just want to say thank you for giving me this opportunity to speak with you. My name is Charlotte Hill. I now work for the Farm Labor Service Center.

I had been a farmworker for like the last 5 years, you know, up until July 1977; I worked on a farm. I worked on a day-haul basis, though, from Philadelphia, where I live, to the farms in New Jersey where I worked.

I currently work—well, OK—with the Farm Labor Services. I provide services to the farmworkers—OK—such as food, housing clothing, like everyday daily needs, which may be stress or strain, whatever.

I believe that my experience with the farmworkers makes me qualified to speak for the actual conditions on a farm and the violations by the crew leaders.

Day-haul farmworkers of Philadelphia go to streetcorners called "pickup points" between 3:30 a.m. to 6 a.m. in the morning, and take buses, stationwagons, vans. Generally, they are owned by the crew leader, and the crew leader will take them to the farm where they are to work like 7 o'clock in the morning to start work.

My 5 years of experience like doing farm work: I was never told where I was going to go, or whose farm I was going to work on, or how much I was going to be paid. OK. You know, like I understand under section 6(b) of FLCRA that there is supposed to be an act like that insures the workers how much they are going to be paid, what is going to be paid to the crews. It is supposed to show like identification, who he is. None of this is being done, and at the time that I was recruited, like this was like last year, I am speaking like more recently like 1977, when I asked how much I was going to be paid, they just quoted that he is paying like 20 cents for a basket of tomatoes, $1.62 for a tray of blueberries.

That depends if you go to the farm and you actually work. It depends on what you do how much you get paid for the day. As I do not know his name, but as he said, sometimes you do not get to work. The farmer does not want to hire you. He does not want you to work on his field if he thinks you are inexperienced because you may ruin his crops, and you have to sit on the bus for 10 hours. If the people stay in the field and work 10 hours, you have to sit on the bus. There is no food, you know, until maybe the crew leader may have a food wagon, though he will have to come out where you have to buy food, or you do not have anything to eat, no water to drink. You just sit there for 10 hours until the day is over. OK.

When you are working in the fields, and I must say this: I think I am a pretty good worker. I work all day when I am there. I work 10 hours. I do not stop—maybe 15 minutes to eat a sandwich or something in the middle of the day. I only earn $7 like on an ordinary day, like if the crop was really good, or I might make $23 for the whole day.

When I worked like in the tomatoes and was making $7, like blueberries, that really is like the best season, but working on tomatoes is a lot harder than working with blueberries.

You have to pick 30-pound baskets. You have to fill it. The farmer does not quote the price. The crew leader says: "Twenty cents for a basket of tomatoes." OK. I only make about $3. Like $5 is the most that I make. Usually, I work with somebody to make that. You know, it is partners. OK.

In all the times that I went on the farm, I never received a payslip except one time I received a payslip, just one time. Usually, like I get paid cash money. The crew leader takes you away from the farm. Once he receives the money, he stops at a bar. Maybe he will pay you.

That way, you turn over the ticket for what you made, like if you turn in a tray of blueberries over, he gives you a ticket for that at the end of the day. You turn that over. He counts how many tickets you have, and pays you for that many trays, how much you made. Other than that, he does not tell you whether he takes social security, or any big thing. He does not give you a statement.

One time I did receive a statement. I do not need this paper for I will never forget this. This was in 1977. The crew leader gave me a statement, and said that I made $3.10, and I worked from 7 a.m.

until 5 p.m. We were wondering when we were going to come out of the field. I said: "I worked 10 hours. Why do you have 3 hours down here." She said that it did not concern me. "Do not worry." She said that they had to write those slips. She had to write them. I felt like I was being taken advantage of because if she was going to pay me $3.45 an hour, I wanted to make $3.45 an hour, not $1.04 if I was being paid, but I was not being paid for what I did. I had been working hard under the sun for 10 hours for $1.04. That is it. I was not supposed to be paid on an oral basis. I did not work 3 hours.

I feel really bad about having to submit that I worked 3 hours when actually, I worked 10 hours on the farm.

I have never done any work directly with the farmer. I do not know who the farmer is, who owns the farm, the way, what farm. I never know what farm I am on unless I see a sign when I pass by, or I might talk to somebody in the field that happens to know what farm we are on. OK.

The crew leader never tells you anything. Upon entering the bus, if he likes you, he lets you on. If he does not like you, he tells you to get off his bus. OK.

As far as the blacklist, if you ask too many questions, they do not let certain people on the bus at all. They will not let you on.

I feel that probably the reason, like a lot of people are afraid to confront the crew leader because they are in need of money, or they are in need for money for food, or bills have to be paid. They, therefore, go to the farms. They will return, like if even the crew leader abuses them. They have no other choice. The farming work is where they feel they can go and get paid the same day.

Oh, I am talking about day haulers, too, the reason that day haulers go back, and, you know, subject themselves to abuse.

I think that I am one of many that speaks out. A lot of them do not speak out. They are not aware of the Crew Leader Registration Act which I am aware of it now. I was not aware of it at the time when this was happening.

A lot of people like that go on the buses that are not aware of it and, therefore, they do not know to ask questions. They do not even believe that they are entitled to the minimum wage. They think that they have no right to it, and the crew leaders have brainwashed them in just that manner.

If they were to ask them: "Why can't I get paid by the hour? I would much rather get paid by the hour," they just laugh at them, and tell them: "You will get paid by what you do."

I am not going to read this whole statement. I am just going to tell you of a few instances that I saw of crew leaders fighting some farmworkers, migrant workers, for not working fast enough to please them. Like he will tell them to get out of the field, or to work a little faster, and sometimes they can really beat the brains out of them; like they are out in the sun when it is really hot, and they are working, and they are not really protected, you know, from the sun or anything, and like he may, like run them out of the field, like they have young boys and girls about 14 or 15 years old.

I saw a crew leader actually hit two boys. They were throwing tomatoes at each other. He stopped them from joking around. He hit them, and ran them out of the field. He would not even let them get out of the field. He would let them stay on out there in the field until it was time to go back to Philadelphia.

One other point I want to make is that this is not a joke. Some crew leaders actually carry guns. I have seen it, like on two different incidents, the crew leaders having guns on them. I guess they carry them like sometimes they have a cash box, and the cash box has really a lot of money in it.

I feel that most of the money that is kept in their pockets belongs to the farmworkers. I think they know that some of the people know this, and they are afraid that the people will revolt.

I want what is coming to me, and I want what belongs to me. Therefore, they carry a gun. They know that people are afraid of them, and they are not going to ask questions.

As far as medical care goes, I think they do not even care—like a first aid kit or anything. If you cut yourself or fall down and break an arm or leg, you have to stay there until that day ends, until the end of the day after the sun goes down, and you are put back on the bus to come back to Philadelphia. There is no kind of medical coverage. Emergency cases are not treated.

A guy was out there that had a seizure, and they left him. The crew leader started shaking him, and he jumped on him. I guess he was going to beat him up. The people told him that something was wrong with the guy, but he was left to lie in the shade. At the end of the day, he put him on the bus, and brought him to Philadelphia.

I had to work in the rain this one day to pick tomatoes, and my hand swelled up. It was swollen. It was cold outside, and I worked until I could not work any more. I could not move my arm anywhere. I had to wait until the rest of the people stopped working and completed the day's work. He brought me to Philadelphia. He never took me to the hospital.

The X-rays cost me $52. Then I finally got back home, and I went to the hospital, but, you know, the only other thing I would like to comment on is about the food, the food wagons.

The food wagons belong to the crew leaders. The crew leader owns it. Not only do they take the bus and collect money for bringing people to the farms, but they also collect money for feeding you. If they bring your food wagon, you have to turn the ticket over at 12 o'clock. If you do not get paid until 5 or 6 o'clock, you turn the ticket over to the crew leader in exchange for food, or something to drink.

Some people, it really takes them a long time to hike. If you do not have the ticket for that, what they do is extend credit until the end of the day. After he extends credit and you get paid, he will deduct the amount that you owe him from the money that he owes you.

And the people can also buy liquor. They can buy beer directly from the crew leader. A lot of times the beer is on the food wagon, and a lot of the workers come home, like they would be drunk in the evening when they come home.

These are only a few incidents, and I can go on and on about the abuses of the people, of having been left overnight. The crew leader just leaves them there. Some catch a bus to come back to the city.

From my understanding, the amendment being considered for FLCRA would eliminate the coverage of the day haul workers. By increasing the exemptions, the crew leaders could travel more than before if a new FLCRA amendment applies. That means they could travel even further distances, and they would not be subject to the law.

Too, I think it permits like large growers to set up nonprofit corporations that would perform activities of crew leaders, and I think that it would expand the existing exemptions from family farms, you know, cooperatives, by agriculture, by striking the word "person" because the farmer is not the one that is doing the actual hiring.

I feel like many farmworkers are not even aware of the exemptions, or the Crew Leader Registration Act, and I would hope that FLCRA, that would expand exemptions like the new bill being passed.

That is all I have to say.

Mr. ANDREWS. Charlotte, thank you for a very interesting statement. I think and hope that all of the people who spoke yesterday are not attempting to permit circumstances such as you have had to witness. I think it is criminal, actually criminal, if people have been treated as you have described.

I do not doubt that some people, and probably you are one of them, have been so treated. I would think that nobody, and certainly, not I, would try to change the law so as to condone and foster that kind of circumstance.

I do not really think that that is what we are even talking about. I think that the majority here would agree that we are not trying to condone that.

I think the act was intended to apply to and be a launching pad to protect, people such as yourself from many of those instances of abuse. That is what we are trying to stop, and we will continue to try to prevent that.

[The prepared statement of Ms. Charlotte Hill, Farm Labor Service Center, Philadelphia, Pa., follows:]

PREPARED STATEMENT OF CHARLOTTE HILL, FARM LABOR SERVICE CENTER, PHILADELPHIA, PA.

Mr. Chairman and Members of the Subcommittee: My name is Charlotte Hill and I want to thank you for this opportunity to speak with you. I have been a farmworker for the last five years on a day-haul basis from Philadelphia where I live to the farms in New Jersey where I worked. I currently work for Farm Labor Services Center in providing services to the farmworkers. I believe my experiences as a farmworker makes me qualified to speak as to the actual conditions on the farm and violations by crew leaders.

Day-haul farmworkers in Philadelphia go to street corners, called "pick-up points," between 3:30 and 6 a.m. They take buses or station wagons, generally owned by the crew leader, to the farm where they arrive about dawn. In the five years when I was a farmworker, I was never informed of the conditions of employment in violation of section 6(b) of FLCRA. Specifically, at the time of recruitment, I was never told the name of the farm or town where I would be working, how much I would be paid, or charges made by the crew leader. When I asked, I was told a piece rate for that crop. Occasionally the rates of pay were posted inside the bus, but only in rare cases.

Day-haul farmworkers often work long hours without a break. Including waiting for the bus and travel time to and from the farm, the work day is often fourteen or sixteen hours long.

I consider myself a good picker. My earnings from blueberries varied from $7 to $23 per day at peak season when the crop is at its best. Picking tomatoes is a little harder. You have to pick about 30 pounds of tomatoes for each basket and the crew leader pays only 20 cents per basket. I earned between $3 and $5 per day when I worked in tomatoes. I also picked strawberries and peas sometimes.

In all the times I went to the farm I only received but one pay stub. Usually I was paid cash at the end of the day at the nearby bar. I was paid by the crew leader when I turned over my tickets showing how much work I had done that day. The crew leader took my name and social security number but gave me no receipt or pay statement. I am not aware of any deductions that were taken out of my pay. After I stopped doing farmwork, I found out that I was supposed to receive a pay stub under section 6(e) of FLCRA.

The one time I did receive a pay stub I worked for a crew leader who gave me a pay stub that said that I earned $10.44 for three hours of work. I actually worked ten hours from 7 a.m. to 5 p.m. This was in July 1977, and I was picking blueberries. I confronted her about the pay stub and she said that it did not concern me but she had to pass them out. What I realized was that I was being taken advantage of. I did not make $3.45 an hour, as she said. I made $1.04 an hour but I was being paid piece rate. I picked 7 trays and 3 pints that day at $1.44 per tray.

The crew leaders are sometimes downright mean and nasty. Crew leaders hit and fight with the farmworkers if the farmworkers are not working to please them. I myself have seen two separate incidents where the crew leader hit a boy with a stick and chased him out of the field because he wasn't working hard enough. In the other case a foreman for another crew leader hit two boys with a cane who were throwing tomatoes at each other while they were working. Although the boys were only about fourteen or fifteen, they were not hurt but they left the field and the crew leader would not let them back on the bus until the end of the day.

Most of the people are afraid to ask questions or to confront the crew leader because many carry guns. I guess the crew leaders carry guns to protect the money that they recieve for the labor that the people do.

There is no kind of medical care, or even a first aid kit, for the workers. I once saw a farmworker have a seizure and the crew leader grabbed him, started shaking him, and told him to go back to work. The people said there was something wrong with him and put him in the shade until the end of the day when he was put on the bus. In September 1976 I was picking tomatoes in the rain and it was a bit cold. My right wrist swell up and I couldn't use it. I had to sit on the bus until the workers finish, the crew leader got paid, made his liquor store stop, and then he drop us off home. He never did take me to a hospital. When I did go it cost $52 for X-rays and I had to pay for it. I made about $1.50 that day.

Crew leaders either make arrangements for a food wagon to come by or they bring food along in the bus. They sell food, soda, and beer in exchange for the tickets that you earn working in the fields. If you don't have any tickets, you get the stuff on credit until the end of the day when it is deducted from your pay. You can buy alcohol either from the liquor store where the crew leader stops or directly from the crew leader at the end of the day. Many workers come home drunk at the end of the day.

These are only a few incidents. I could go on as to the abuses of the crew leaders towards the farmworkers. My understanding is that the amendments being considered to FLCRA would (1) eliminate coverage for day-haul workers by increasing the distance a crew leader travels before FLCRA applies; (2) permit large growers to evade FLCRA by setting up non-profit corporations that would perform the activities of the crew leader; and (3) expand the existing exemption for family farms to corporate agriculture by striking the word "personally." These changes do not seem to be fair to the workers who are supposed to be covered as long as enforcement of FLCRA is so weak and ineffective. Many farmworkers are not even aware of the existence of a crew leader registration act. I would hope that FLCRA would be adequately enforced with its existing exemptions before any new or expanded exemptions are considered.

Thank you again for the opportunity to speak with you.

Mr. ANDREWS. All right. Who is next? Mr. Tyler.

Mr. Tyler. Mr. Chairman, my name is Leroy Tyler. I represent the farmworkers of York County, and I am from Cumberland County.

Mr. Andrews. May I suggest that someone else proceed first, and then let me tell you why. Mr. Goodling, who is from York, Pa., has gone to the floor, and properly so.

Mr. Tyler. Yes.

STATEMENT OF ROBIN ABRAHAMSON MASSON, WESTERN NEW YORK RURAL LEGAL SERVICES, MONROE COUNTY LEGAL ASSISTANCE CORP., ROCHESTER, N.Y.

Ms. Masson. Thank you, Mr. Chairman. My name is Robin Masson. I am from the Western New York Rural Legal Services. We are a legal services office located in Rochester, N.Y. We serve a 10-county area in western New York.

We deal mostly with farmworkers who have come up from the South for the potato and cucumber annual harvest in New York State, and they are returned to the South after they are finished. Generally, everybody is gone by Thanksgiving.

Mr. Andrews. May I ask you: Are you not talking now about a situation that is not before the subcommittee? Everybody, I believe, suggests that such workers should remain covered by the act.

Ms. Masson. Mr. Chairman, I submit that some exemptions in some of these bills would take these workers out of the coverage of that bill. It is to that coverage that I was addressing myself.

Mr. Andrews. Which of those would do that?

Ms. Masson. First, Mr. McFall, Mr. Sarasin, and Mr. Ireland would redefine the requirement, you know, the principal act.

To be covered, a crew leader must receive a fee for services from the farmer as well as recruit, solicit, or transport, or whatever, farmworkers.

These bills propose to change the definition by defining them as a consideration in excess of the actual cost of providing such services.

Now, the effect of that change in New York State would, basically, take every crew leader operating in that area out of the act. It would require a farmworker who is aggrieved to have to prove that this crew leader is making a profit solely from his activity as a crew leader.

This is very difficult to do for a number of reasons. First of all, most transactions are handled between the farmer and the crew leader, and then the crew leaders and the workers are in contact with each other.

They are not paid by check. There are no records kept. So it is very difficult to ascertain, first of all, how much the crew leader is receiving for his services.

Second, many crew leaders operate in tandem with relatives or friends. We have Mr. Smith, Sr., Mr. Smith, Jr., his daughter, his wife, and all of these people working together in various supervisory capacities.

It is very easy, in cash transactions, to divert their money to their friends and relatives, and to cover up any moneys received in excess of the actual cost of providing the services.

Third, most of the crew leaders in New York State perform other functions other than the traditional crew leaders' function. Sometimes they are the paymasters; they manage the housing; they run the commissaries; they provide meals.

It would be very easy for them to say that what they are receiving from the farmer is not profit, nothing in excess of providing service, but they are being paid to drive tractors, or doing other things at a salary. That would not be a profit. That would not be within the reach of the act in that case.

Further, in past seasons in New York, there was a lot of rain which reduced the basic number of days for the potato harvest almost in half. In that case, it would be very difficult to show that that crew leader actually made a profit in that period of time when many days were spent not working by his workers, or himself, so for that reason, that would be a very dangerous definition because it would take 95 percent of the workers in our area out of the coverage of the act.

Even if the courts were to ultimately decide that yes, this crew leader did receive a profit, I can envision all kinds of problems with filing a lawsuit, and spending years in litigating, appealing, and going back, to determine whether, in fact, this guy made a profit before you can get a good root of the problem, and weighing the problems of the workers, the crew leaders misrepresenting facts to these workers, forcing them to work off debts which may be real or imagined.

That is about all that I have to add to the testimony today. I would reiterate what Mr. Masinter said about the regular seasonal employee.

Most of the crew leaders in western New York do return to the same farm in New York, the same setup regularly. Each Labor Day they are known to arrive at Farmer Brown's with 30 people to pick apples. So they come up every year. That seems to be every bit a regular seasonal employee.

It would take those people out of the coverage of the act as well.

I thank you for this chance to talk to you on very short notice. I hope that you will consider the testimony today as well as that which has been documented in prior hearings. Those things are still occurring today.

I think that these amendments that are proposed would not repeal the act, but it would take so many of the people out of the reach of the act. Some of those worst crew leaders would no longer be required to comply with it.

Thank you.

Mr. Andrews. Thank you. You certainly shed some light on this. I would be interested in pursuing this. What you are saying, if I get it, is that you are familiar with circumstance wherein a crew leader, acting in the typical circumstance of a middle man, secures workers such as Ms. Hill and others and, in turn, contracts their labor to the farmer.

What you are saying is that under these bills, we are excluding that crew leader because the compensation which he is receiving cannot be proven, and hence, he can say: "I received no fee."

You say that he did receive compensation, but because of the cash nature of the transaction, and certain other factors that either cannot be proven, or that are exceedingly difficult and expensive and time consuming to prove, he continues to evade the act.

Ms. MASSON. You are right, Mr. Chairman.

Mr. ANDREWS. I hope that if there be persons in the audience who disagree with that and feel that such person does not so exclude himself, I hope that you will make a note of the circumstance which has been described. I would like to hear the other contention with respect to that.

I do not think that Mr. McFall understands that that could be the case. At any rate, I believe that we are down now to Mr. Tyler, and Mr. Goodling has not returned.

If any of you would like to make any comment, please feel free to do so.

Mr. MASINTER. Thank you, Mr. Chairman.

I might add a couple of points to the last statement regarding the fee device which could easily be used to evade registration.

If any fee would be described as something which, in effect, would be profit, it could be a situation which we have already seen in Florida that has been adopted for other reasons.

The crew leader receives a very small amount of money for actually providing the workers, but then he also receives a great deal of money for hauling that produce that those workers picked.

The income appears to be derived not from his activity as a crew leader, but from his activities as a vegetable hauler, and it would be fair to say that that is not a difficult kind of situation for a crew leader to set up.

There is one other point which I neglected to mention earlier. I gather that there has been some objection to the recordkeeping requirements. Someone characterized those requirements as "record swapping" requirements.

As I read the act, under section 14, the exchanges of the records only takes place when the crew leader pays the workers on behalf of the farmer.

It would seem to me that that farmer would want to know that those workers have been paid that money which he has turned over to the crew leader, and that it has not gone to the crew leader because the farmer, nevertheless, is ultimately held liable for not paying wages under the Fair Labor Standards Act.

There are cases that have evolved in the U.S. Court of Appeals for the Fifth District holding that the employer is jointly liable for the payment of wages even when he delegates that responsibility to the crew leader. So it is ultimately in the employer's interest to have copies of those to make sure that the workers have been paid so that he can discharge his obligations under the Fair Labor Standards Act.

Mr. ANDREWS. I am trying hard to understand all of this. Maybe I will eventually hear and get a statement from the gentleman who was chairman of this subcommittee during the time in 1964, and who was presiding.

When the amendments were being evolved and were passed, I was asking him why certain things that offhand appeared to be unnecessary were, in fact, in the act. He explained to me that the committee, during its hearings, learned of instances in which the farmer thought that he was complying with the law, and with reason, and he was paying the crew leader for the workers.

Maybe he was paid $3 an hour per worker back in 1972 or 1973. The crew leader, he said, was telling the workers that the farmer was paying him, say, $2 an hour. So the farmer would give the crew leader $3 per hour per worker, and the crew leader would, in turn, give the worker $2 per hour. He said that in order to regulate that, this law was passed. There should be a record of what the farmer does, and what the worker does.

In other words, there are three entities: The farmer, the crew leader and the worker. Each one should have some record of what the other one understands the transaction to be consisting of.

Mr. MASINTER. We have a very simple form in wide use now in southern Florida that all of the crew leaders have been furnishing. It is a three-part form with a series of detachable pieces of paper, and making up the first part, the first sheet is the wage statement to the worker. The second part the crew leader keeps for his records. The third part is handed over to the farmer at the end of the day. It alleviates the need for anybody having to have a Xerox machine, or trying to write these things out three time. It is all done at once.

These forms are in fairly common use now. The top part of the series of little pieces of paper, separately detached, becomes the statement.

[The prepared statement of Ms. Robin Abrahamson Masson, Western New York Rural Legal Services, Rochester, N.Y., follows:]

PREPARED STATEMENT OF ROBIN ABRAHAMSON MASSON, WESTERN NEW YORK RURAL LEGAL SERVICES, ROCHESTER, N.Y.

I work for Western New York Rural Legal Services, a program that is funded by the Legal Services Corporation to provide free legal services to migrant farmworkers. During the last harvest season, our staff observed numerous instances of abuse and exploitation of migrant farmworkers by crewleaders and employers. The conditions described below are not isolatd incidents—they are examples of practices that are common throughout western New York State. Indeed our office is now representing over 50 clients with complaints based on crewleader abuses of their rights. All of these clients have a remedy under FLCRA for these abuses; if the proposed amendments are passed, almost every one of those crewleaders will be exempt and all protection for these workers and others similarly situated will be lost.

I. THE CONDITIONS

Migrant farmworkers occupy the lowest rung in our society. They work long hard hours to harvest the fruits and vegetables that come to our tables. Despite their hard work, they are subject to exploitation and are deprived the rights that are most basic to a human existence. It is generally the crewleader who is the instrument of this exploitation. The crewleader recruits workers in the south with promises of plentiful work, an opportunity to make hundreds of dollars a week, free housing, and transportation home again, at the end of the season. The representations are all oral—nothing is given to the worker in writing. Many workers do not even know what crops they will be picking, the wage rate, or what charges will be levied against them.

The workers are transported by the crewleaders from their homes in the south to the fields in the North in rickety buses, the backs of flat-bed trucks without seats, or in vans. One crew traveled in a bus that had no brakes. Often, they travel for twenty or thirty hours, with only short stops for gas.

Rarely is food provided for the workers; some are lent a few dollars with which to buy food and later they find out that 100 percent interest is charged.

When they arrive in New York, they are housed in labor camps far from the nearest village. The camps are overcrowded, dirty, lack windows and screens, and the workers sleep on bare mattresses without coverings. One crew arrived at a camp that hadn't been operated for ten or eleven years and the workers had to spend a full day clearing it of rubbish and cobwebs before they could move in. Because the camps are so isolated and the workers have no transportation of their own, they are wholly dependent on the crewleaders. The crewleaders operate commissaries, or "company stores" selling beer, wine, and cigarettes at almost twice their market value. Some crewleaders occasionally take the workers to a country store with poor selections and high prices to buy sundries where there appears to be some kind of kickback arrangement between the store owner and the crewleader.

When the workers begin work, they find that most of the representations that induced them to travel north were false. Work is not plentiful—overrecruitment of workers result in few days of work per week. They arrive days, weeks, or even months before the crop will be ready and no work is available in the interim. They are paid by the piece rate and the crewleader counts the bags of potatoes or bins of apples each person picks. In at least 75 percent of the complaints handled by this office the workers complained of a "short count"—that is, the workers were given credit for fewer units than they in fact picked. One client picked 2,701 bags of potatoes in 8 weeks, but was only given credit for 1,177 bags.

The workers spend many hours waiting for the crewleader to transport them to a new field when one is picked clean. One client caught pneumonia after spending several days waiting in wet, muddy clothes for hours at a time to be transported from one field to the next. The crewleader threatened to beat him with a crowbar if he didn't continue working and refused to take him to a doctor. In the end, the worker was hospitalized and was disabled for several weeks.

On "pay day", the workers receive little or no money for the week's work. Some are given empty envelopes which show that their alleged debts exceed their earnings and they therefore receive no money. Others are given their wages by the crewleader only to be told by the crewleader's agent standing nearby that as much as or more than what they made is owed to the crewleader and to pay over all their earnings.

These debts are in large part fictitious. The workers are not given receipts when they borrow from the crewleader or make purchases at the camp commissary. One client found out that although he had been promised free transportation, $6 per week was being deducted in payment for that transportation. Another worker had kept his own daily records of his pickings and purchases. When the crewleader found out, he ripped up the worker's notebook, thus destroying any evidence that contradicted his tally.

A common practice in the apple harvest is for the crewleader to promise a certain wage, for example $6.50 per bin, at the time of recruitment and then withhold $0.50 per bin on pay day, saying that it will be paid as a "bonus" if the worker stays until the end of the season. The crewleader then fires many of the members of his crew a few days before the end of the harvest and refuses to pay the bonus. One crew was promised $0.20 per bag of potatoes but only received $0.15. For another crew picking cucumbers, the weekly wage reached as low as $0.80 per worker.

Many crewleaders charge the workers for 3 meals a day, whether or not they are eaten. In one case, the cook was often out in the fields and didn't serve lunch, but the workers were still charged for three meals. The meals themselves are rarely worth the $2.00 charged. One crewleader served only boiled potatoes and chicken necks for dinner; another served bread and juice. Rarely are there common cooking facilities in the camp, so the workers have no choice but to buy their meals from the crewleader.

Often these charges and deductions are not itemized. The workers must take the crewleader's word for both his debts and his earnings. Payments, if made at all, are in cash, so there aren't even check stubs to prove wages earned and owing.

It is often asked, if conditions are so bad, why don't the workers leave? Many workers lack their own transportation. They have no money on which to survive outside of the camp. They are far from home and do not know who to turn to for assistance. Crewleaders use threats and violence to keep the workers on camps. Members of our staff have been told by crewleaders that crewmembers are prohibited from leaving the camp as long as they owe money to the crewleaders. They are forced to stay and work off the debts. When our staff informed the crewleaders that the Thirteenth Amendment outlawed slavery, they said they didn't care. One client was working on a farm in North Carolina when he was approached by a crewleader who wanted to take him to New York to pick potatoes. When he refused to go with him, the crewleader said to one of his henchmen, "I ought to kill me one of these niggers." Under threats on his life, the worker went with the crewleader. During the journey North, another worker tried to escape from the car, but the crewleader threatened to "bust him upside the head." Both workers continued to New York with the crewleader.

Another worker, an epileptic, had used up the supply of medicine he brought with him from Florida and needed to see a doctor. The crewleader refused to take him to town and threatened to beat him if he left. The worker sneaked out of the camp one night and walked ten miles to town in the snow. He never returned to collect his belongings because he was afraid he'd be beaten. Injuries are common, especially in the apple harvest. Many of our clients have fallen from rickety ladders. Their crew bosses have refused to take them to the doctor and some have been forced to continue working despite pain and broken bones.

II. FARMWORKER PROTECTION UNDER FLCRA

Presently, FLCRA provides a measure of protection from these abuses. It requires all crewleaders to register with the United States Department of Labor. It requires the crewleaders to deal fairly with farmworkers by requiring that the terms and conditions of employment be disclosed to the workers in writing at the time of recruitment. Further, it requires accurate record keeping on the part of both the crewleader and farmer with respect to work accomplished, wages paid, and charges made. Finally, it requires that on pay day the workers be given an itemization of all earnings and deductions. Compliance with these provisions on the part of crewleaders would eliminate most of the abuses I have described.

The 1974 Amendments, for which congressman Ford deserves great credit, created an effective Civil remedy for farmworkers whose rights under FLCRA were violated. Farmworkers can now sue in federal court for the actual damages sustained or liquidated damages of $500 for each violation. This remedy is of crucial importance because of the difficulty of proving actual damages. Since most employment contracts are oral, the exact terms are likely to be disputed. Moreover, since most transactions are on a cash basis and records, if they exist at all, are incomplete, further proof problems are presented.

III. THE PROPOSED AMENDMENTS WOULD SERIOUSLY DIMINISH FARMWORKER PROTECTION

The proposed amendments, while they would not by their terms repeal FLCRA, would exempt almost all of the above-described crewleaders from its reach.

A. Fee—The redefinition of "fee" would have the widest effect. By requiring that the crewleader receive consideration "in excess of the annual cost of providing such services", in essence, a profit, most if not all crewleaders would be exempt. Many of the crewleaders act as foremen in the fields, paymasters, housing managers, or tractor drivers. It could be argued by them that what they receive only compensates them for these services, but is not a profit.

Most transactions between the farmer and crewleaders are in cash. Income and resources are often diverted to friends and relatives. Records of these transactions are murky, at best. For these reasons proof of profit to the crewleader is almost impossible.

The crewleader may be able to show no profit in the typical sense when bad weather limits work. For example, in September of 1977 the many days of rain seriously impeded the potato harvest in western New York and may have limited crewleader income. The worker abuses continued however, and crew members needed legal protections much, and perhaps more, than in a more "profitable" season.

B. Bona fide regular employee—By defining bona fide regular employee as one who is regularly employed on a seasonal basis, even those making a profit would be exempt. In western New York, approximately 75 percent of the crewleaders are arguably regular seasonal employees of the farmers to whom they supply workers, because they return to the same farm year after year. This exemption would encourage crewleaders to work out arrangements to return annually and thus escape their obligations under FLCRA. For example, all but one of the crewleaders I have described have long-standing relationships with the growers for whom they work. The exemption would also encourage the grower to hire the same crewleader year after year and thus avoid responsibility for the plight of his farmworkers.

C. Corporate farms and non-profit associations—In western New York, it is a common practice for a cooperative or grower's association to recruit workers for its members, house them, pay them and be reimbursed by the members. These entities are still subject to FLCRA, as they are not charitable organizations. The insertion of the word "or" between non-profit and charitable [Section 2042(b)(1)] allows trade associations and cooperatives to be exempt. This amendment denies the migrant farmworkers employed by them an effective remedy for exploitation.

By omitting "personally" from section 2042(b)(2), farmers can shield themselves from liability by incorporating. Because it is the present position of the Department of Labor (Opinion Letter of Xavier M. Vela, Administrator, October 3, 1977) that a corporation cannot recruit "personally", a farmer cannot avoid his obligations on the basis of his technical legal status. Under the amendment, the mere filing of incorporation papers will give any farmer an exemption and will leave the migrant farmworkers in his employ unprotected by federal legislation.

IV. CONCLUSION

On behalf of our migrant farmworker clients, I strongly urge this committee not to adopt the proposed FLCRA amendments. The exemptions they create would leave farmworkers without protection from crewleader abuses and deprive them of the only effective civil remedy they have for serious deprivations of their rights. Conditions that were supposedly outlawed by the Thirteenth Amendment, abolishing slavery and involuntary servitude will persist. The victims of this exploitation, people who would rather work for a living than collect welfare, will be powerless to obtain the basic, human existence they earned and deserve.

I thank you for this opportunity to share the experiences of our clients with you. I urge you to keep them in mind when considering any amendments which would weaken FLCRA and would deprive our clients of the only effective civil remedy they have for abuse and exploitation by crewleaders.

Mr. MASINTER. All right. Mr. Goodling is back now.

Mr. Goodling, we have, I believe a constituent of yours, Leroy Tyler. We asked him to withhold his statement until you could return. You probably know some of the employees to whom he might be referring.

Mr. Tyler, we would be pleased to hear from you.

STATEMENT OF LEROY TYLER, FARMER

Mr. TYLER. Mr. Chairman and members of the committee, I am very proud to be here, and to have this opportunity to talk to you. I do not have any written statement because I do not need any written statement.

I have been a farmer all my life. I still came out for 9 months and worked. I helped the farmers' workers. And the main thing that I am here concerned about is the abuse, and the things that the crew leaders do because there is no other way. It is a bad way with the crew leaders. There is no other way. We cannot do anything with the crew leaders because they do everything that is wrong, especially in Pennsylvania in places that I can go to because 0 goes to every county. I went around to 80 or 85 counties. I know what is going on, and I have been out there. I know exactly what is going on. That is why I did not write any statement down. I know the crew leaders.

They do not pay nobody all their money, and some crew leaders, they even charge for toilet paper. They charge you a nickle for one small sheet. They might give you two sheets for one nickel after they give you that. I think that the crew leader is supposed to provide the toilet paper, and stuff like that.

But the main thing is the money proposition because I talked to some of them last January about the driver taking them to different places. I have talked to some of them.

Some of them have come up to me, and asked me where they could go to get their money. I did not know so I asked them what the problem was.

They began to tell me that they worked the whole week long, and the crew leaders give them exactly what they think they should get. They do not give any written statement: how much they earn.

If they are picking apples, they have those tickets. They put them on the ticket bin. So the crew leader will have two or three, what you call "bill", so that they go around for him and take the tickets off the bin, and place more on the bin, and at the end of the week, regardless, if you do not have the ticket on the bin, you do not get paid.

And about a crew leader, I know exactly because I worked under a crew leader for 14 years. I was born and raised a farm worker, and I know what it means. I know exactly what the people mean because I have worked for $1 a day all day long, from 6 until 6, not for $2, but for $1 all day long.

I know what they mean when, if you work all day in the hot sun, and it would be hot, it would be hot out there in the mornings, and sometimes it would be raining when the crew leader would take you out. Sometimes it would be far down on the ground, and he would still take you out. If you get sick, they still take you out. If you get sick in the field, they do not bring you back in. So this is the reason I am here.

I want to know what can be done about this, and who would enforce this, and why not the law? Why is the law not being enforced? Because the things that I see is not on paper because I have seen it for myself.

It is not 2 years, it is just last year, 1977, that I seen some crew leaders that do not pay their workers, nothing. They just tell them: "Well, you know, $300: I gave you beer. I gave you liquor, and plus, you got to pay for your room and board. You got to pay for your food."

Two or three young men came up to me, and asked me where they can go to get their money from. Even the crew leaders in Gettysburg, they have work, because while they were up here, they did not have money to go back to Florida.

Because in South Carolina, the crew leaders, when it is raining, they would say that they would all have to go back. So that they would keep so much. They would keep all the things. So that if he were to get towels when they take a bath, they would charge them for that.

Like the farmers give you sheets and blankets when you get up here.

If you are not on that camp, you do not know what is going on. You have to be out there, and then you know exactly what is going on if you are out there among the people. When you are out there among the people, you know exactly what the people are going through. That is why I chose to be here. I did not need any written statement. I know that I am qualified to speak to the committee because I have been there. I know what is going on. I know what the crew leader is doing.

I do not know exactly which law it is under, but I know one thing, that whenever the law is unknown, the crew leader does not go by the law.

They have to get their own law. The crew leaders do exactly what they want to do regardless of what the farmers tell them. They do exactly what they want to do because the farmer deals with the check to the crew leader. The crew leader tells the workers that they have to sign their name. He then goes to the bank and cashes it. I have seen them do that every week. I see it happen every week, week after week.

I know that some young men, they work all week long, and have to make $2 or $3 picking apples. Sometimes they draw $50. No way in the world, there is nothing, that one man can rake $200, $300, $150 for the work, and buy food for a week. Regardless how big it is, you cannot do that in a work-week.

I know these crew leaders. I know what they argue. They argue to keep all the money in their pocket, but you see, these men need to be checked on because if I was, or had—let me put it in this way: If I had a right, I would carry some to court, but I do not have the right because I was a farmer, but all my life I have been among crew leaders, and they did it to me also, but I got out of it, see, when they did not pay me. I tried somebody else. When they do wrong, I would try somebody else until I found that I just have got to do something for myself, and I got myself a job, but I still work at the same paying job. I have got to do the farmer's work. But regardless, if you are paying $2, that is all right with me.

Last week I went to pick apples. I told the crew leader that I think you are supposed to know your rights when you are going in the field.

He said: "No; because I just go along with what the rest of them say. They say they are getting paid." So what. He is getting paid. Good. It might be the rest of the $50 that he might be paying. Good. So he is going along with that crew leader.

I have asked some crew leaders—I just asked to be asking—I asked some crew leaders: Do they give stubs, or anything, to the man? One or two of them told me that they did not need any stub because they weren't going to do anything but throw the money anyway. So I keep thinking that regardless of what they do with the money, the crew leader is not supposed to keep their money because they do not work for it.

In Pennsylvania, in the surrounding areas where I be, I know a whole lot of crew leaders, for example, and there is a lot of abuse going on. I know that nothing is being done about it, and I know that under the law, there should be some kind of law that can go over.

The farmers would be helping, and the farmworkers would not just be helping themselves, but they would be helping the farmers, too, because the people up here are not going to go out in the field to be picking apples like the people who come from the South. They are not going to do that.

So the farmer in Pennsylvania who just has regular seasonal farmwork will have to have people from down South. That farmer will just about have to depend on them because I talked to a lot of people this year. I asked them if they would pick apples. The majority of them told me no. They are the ones who live here, who were born and raised here.

So they are not only hurting themselves, they are hurting the farmers, too. Five or six told me that they would not be back. So the organization I am working now, after they get back up here, I think the only reason I worked last year is that I am not under the same one, I think the organization I am working for now, I think that we will be more able and in a better position in a year to be speaking for the farmworkers in what we want to have when we go to the counsel.

We want to have a written statement so that each individual will know exactly what he is going to be doing, how much he is going to get paid, when he is required to work.

I know that some farm crew leaders make them work all day Saturday and Sunday. So I think that if a man works 5 days, I think that he has a right to tell the crew leader: "Well, I am not going to work on Saturday and Sunday." It is OK to work on Saturday until 12 o'clock. I do not think that the crew leader should be able to say: "You have got to work, or get out," after a man has worked hard all week from dawn to dawn. During the apple season, it is from dawn to dawn. I do not think that any crew leader has a right to do that. I do not think that the crew leader has that right.

Like Ms. Hill knows a lot of them. A few have gone, but the majority have gone, and they will use them if you do not do what they say. And I know a few of them. I would not call any name. I have noticed a few of them that have used them. They did not use many of them, but, man, you want to use it. So the crew leader is the main problem.

It is not definitely putting the blame on the growers because the growers pay the people. The crew leaders take the money, not the growers. The crew leaders are the ones who take the money. That is what I am concerned about. What can be done about the crew leader? How long must the crew leader take the people's money because people do not want to come 1,000 miles. Some of them, at least, come 1,300 or 1,400 miles. They do not want to come and just let the money be taken from them. They come at some sacrifice for money. They should have some kind of written statement that they will get paid.

There are problems when it is raining. I have known some boys that told me. They say that when it is raining, they would not be working before the apple season coming on; they would be out of work for about, I would say, 3 weeks. One told me: "You know, I can go and get me a meal. Sure. You should try getting some food stamps."

I said don't the crew leaders take care of you until you start to work? The remark was, he told me: Say, if you be out of work 3 weeks, if you be out of work 3 weeks and you are on an account, if you are working for a crew leader, you do not want to go out of work for 3 weeks with the crew leader because for those 3 weeks, he is going to charge you for 2 months of credit. They make you pay for things you are not suppose to pay for.

I understand the law. I cannot read that good, but I understand what I read, and I know that under no law that I have seen that the crew leader should charge a nickel for a piece of toilet paper. That is just to let you see how many nickels he can make on a roll of toilet tissue. You might not have the nickel. What are you going to do?

What can be done about these crew leaders? I cannot go about it in New Jersey because I have not been in that area. I am just speaking of Pennsylvania. That is the area I am speaking to.

I think that is all that I have to say.

Mr. ANDREWS. As I said earlier, your Congressman is here. You can ask him.

Mr. GOODLING. I suppose I should start by saying: How many times did you contact your congressional office when you heard of all of these abuses?

No. 2: I would say: Who are the crew leaders? Do you have some names?

Mr. TYLER. I would not call their names in public, but in private, I will give you the names.

Mr. GOODLING. I would like to have them. I would also like to have the names of the farms at which they worked because maybe the farmer was ripped off as well as the employee.

Ms. HILL. Mr. Chairman, I would like to comment on what Leroy Tyler had to say. I do not know him personally. I just met him today, but I think the point that he is trying to make is that we do not hold things against the farmer, but I feel that by changing like the law that already exists, especially when it is not being enforced already, would just make it more easier for the crew leader to get away with the abuses that they do.

I do not know if the farmer is aware of the crew leader, what the crew leaders are doing.

Mr. GOODLING. If you were here yesterday, the point we were trying to make to the Labor Department is that it appears to be very busy delving in operations that are apparently working well, while apparently, they have an awful lot to do in areas where it is not working well, and circumstances where it is not working well.

Both of your testimonies would certainly corroborate with what we were trying to tell the Labor Department yesterday. But I think it is very important, you see, if you have these kinds of abuses that Mr. Tyler was talking about. They are very definitely covered by the law.

Ms. HILL. The most important thing, I think, is that FLCRA already has the Registration Act. If that could be enforced, then it would prevent like the crew leader from doing what they are already doing, what they are up to; like they would have to keep records, to give pay stubs, and even if they paid you by cash, if they gave you a valid stub, not stubs that are falsified, saying that you are getting paid "by hour," that pay rate.

If FLCRA were being enforced as it is now, it would prevent the crew leaders from getting away with what they are getting away with. By amending it, it would just enable them to do things. I feel like knowing crew leaders personally, something like 22 or 23, they already have an association for crew leaders. They get together and talk. They discuss how much one is going to pay, what the next one is going to pay. I feel that they have their things already and, again, like they are out to get the farmers workers. They know that the farmworkers depend on them.

I do not feel that the farmer should be cheated and abused. They are. I am going to comment on what Mr. Andrews had said. So I say that they should be subject to the same things as the clerk in a store. That, you know, they have the right, too, and they are entitled to the minimum wage just like the next man.

I have personal feelings on that, but if it could just be enforced, even if the crew leader was going to pay on a piece rate, that people would get their money, and that they are treated fairly.

Mr. GOODLING. Mr. Tyler, during your experience, to whom did you report these abuses?

Mr. TYLER. When I first started to work, when my job was specifically pointed out, I started as a vandriver, and I had so many accounts to run to. We had 885 accounts. We had one vandriver. I was the only one. I would leave in the morning sometimes at 5 o'clock. I would get back that evening, that night at 2 o'clock the next morning. Sure, I would have to get right back up, and go right back to work. I did not have the time to report to nobody. I did not have the time.

When they would give me the slip, sometimes I would have 70 and 80 names. I would have to get the people to the clinic, the hospital, the dentist, the dental clinic. That is what my job consisted of. But after I changed out and was put on hourly work, and I think that as I am working now, I think I would be more able, and I will report.

I had a little talk with my director out of New Jersey, and I think that I can this year after the season opens up, I think that we are going to have a written statement to tell each individual their rights, what they are supposed to get paid, because I think that the people really do not know what they are getting paid.

Mr. GOODLING. What I am trying to point out is that all of this is part of the law, Mr. Tyler, and as we tried to point out, the Labor Department, as I said yesterday, are too busy trying to enforce things that do not need enforcement, and missing the things that need enforcement. Somebody has to report these abuses.

For instance, in most instances, I have a very proud farm population back home who believe in things being done right. How many times does the farmer know about the abuses that you are talking about? You say that he was paying his share, and so on, but somebody has to make the move to report the abuses. That is the only thing that I am trying to point out.

Mr. TYLER. Yes. You are right about that, but I went to one just to find out, and they gave me some answers. I went to a legal service attorney, Richard Thrasher in Gettysburg. I talked to him about some of the crew leaders' abuses, and he told me.

I have time to do it this year because I am on a different organization, and my job is different this year. Here, I do not have to get up so early. I do not have to be up at 5 and work, sometimes I work 17 and 18 hours a day. I really did not have time to report it to anyone because I just did not report it.

Mr. MASINTER. Mr. Goodling, if I might respond to your question further, this past summer was the first full season that our office was in operation in western New York. We found, in talking to our clients, the farm workers, about what was going on in the counties, and what they were being paid, when we asked them questions such as: Did you get a written statement of the job conditions? Did you get pay stubs? Did you get paid—they would look at us in amazement. And they would ask: "We are supposed to get that? Is there anything that requires that?"

We said yes, and these are your rights, and this is what the law protects you from. These people would not complain about the crew leaders. They would not complain to the farmer. They were very reticent to talk to us, their lawyers, because they were afraid of being beaten, or being shot, or being fired, or being thrown out of the camp in the middle of New York State with nothing, with no money, with nobody, having no money for transportation.

It is a tremendous risk for any of these people to complain because they are not given written statements in the beginning when they are recruited. They do not even know that they have any rights, that there is anybody to whom they can complain, or that they are even protected from retaliation. So when you ask why did you not complain? Why did you not say anything? To whom did you complain?—that is not a realistic alternative for most of these people because when they see that their brothers are being beaten up when they speak up and say, "I am not being paid enough," they are going to be quiet. They are not going to risk being beaten up themselves.

Mr. GOODLING. Again, you are reinforcing what we were trying to say yesterday. There is an awful lot of emphasis on checking on whether the agricultural teacher takes his agricultural class to do this kind of work. There is an awful lot of concern of just what is going on. There is so much concern that they forget about the abuses of the crew leaders who are in this business all their lives, and that they are supposed to provide for these workers, and that the crew leaders take advantage of them. That is the point I am trying to make, if the Department would be a little more concerned.

Yesterday I tried to get them to define what they meant by an "agricultural worker," first of all, because their interpretation, apparently, means that if I hop on the bean bus and run by the local farmer, the cannery, or something of that nature, I am automatically an agricultural worker. They have to give an awful lot of surveillance to that operation, which we know and they know has not been abused. It would be better if the effort would be put toward what Mr. Tyler was talking about. This is why we are trying to differentiate between migrant workers who do this for a livelihood all year long, moving from spot to spot, in relationship to the kids who are just some people who are out, as some people said yesterday, for a social time. That is why I consider my experience on the bean bus more than anything else, I suppose.

I think we can appreciate the problems on this end, but I think that there should be much more time devoted to these problems which are serious if, somehow or other, the Department would review exactly what the intent of the law was, and then enforce those abuses that are being brought about in violation of the law. Everything that Mr. Tyler talked about is in violation of the law.

Mr. MASINTER. I agree with you there, and you are certainly right, that there is a great need for greater enforcement on the part of the Department of Labor.

However, what this proposed amendment would do would be, as I said before, I think you were absent while I was talking, to effectively exempt those crew leaders.

Mr. GOODLING. These chairman get reelected whether they go or not. We, the peons, have to go and answer the quorum calls.

Mr. ANDREWS. I go when there is a vote.

Mr. MASINTER. Seriously, the worse crew leaders in New York State would be exempt under the language of the proposed amendment—specifically, Mr. McFall's, Mr. Sarasin's, and Mr. Hillis'—because for those people, it would be very difficult to prove that these people earn a profit at their work, and most of them return year after year, and are regular seasonal employees.

There is no doubt about that then, that they have arrangements when they come back every Labor Day with 30-some people to pick apples. It would take these people out of the act as well. Regardless of how vigorously the Department of Labor was enforcing the act, they could not reach these people because they would be exempt.

Ms. HILL. Mr. Chairman, I would like to maybe put a light on how the crew leaders actually make their money.

Recently, this summer, I met up with a girl friend that I went to school with. She is now a crew leader. The way they make their money—I am talking on day-haul situations—is that a crew leader will bring, he may own 1 bus, or he may own as many as 10 or 11 buses, he will bring 34 to 40 workers on one bus, the farmworkers that actually work in the field, and they may pick something like 2,000 pounds of crop, or 2,000 trays. Whatever that crew does on that haul, the crew leader gets paid by the pound, the value of what that crew did.

Now, he pays like the farmworkers, like I am saying, 20 cents per unit. OK. And even like blueberries, which is the most money, they pay out there, that is like the highest in Pennsylvania that was paid, $1.62 a tray. The lowest was $1.42. That varied from one crew to the next, depending on who you went with. You know, I have known this to be a fact.

Most crew leaders make something like $1,700 a day. You know, this is what they are bringing home themselves. I do not know what their fee is, how much they get actually by the farmer for hauling the people, but I do know, on an overall basis, the least that the crew leader makes is something like $1,700. That goes like in his pocket.

Mr. HARRINGTON. A lot of the amendments being considered here would broaden the exemptions in such a way as to permit a lot of the activity that Ms. Hill and Mr. Tyler have discussed. Certainly, the amendment related to the day-haul workers, all the abuses that Ms. Hill has discussed would be permissible if the amendments which are related to the day-haul workers were enacted; although they are not currently now enforced, they go on currently because they are not enforced, should those amendments be enacted, they would be permissible.

The other amendment being offered would broaden the exemptions in such a way that unscrupulous crew leaders or growers could band together and form nonprofit organizations, and because they engage in things not personally but on their own behalf, they could evade the intent of the act. It would have the effect of gutting the bill.

Mr. GOODLING. The problem, you see, that we run into is that we end up constantly writing legislation where we punish the people awfully hard in order to get them to do what is right, and what is well because of the unscrupulous people involved. There has to be some way to differentiate between the two.

Let's take the farmer who, for instance, happens to be in a community like mine, Adams County. I am talking about the bean and the strawberry harvests, that kind of thing, where you get situations that have been going on for years and years, and have been handled very well. There has been no abuse, nobody is suffering, and yet, they fall under the same kind of scrutiny and regulations and oftentimes, law enforcement because in many instances, they are smaller than those people who are running the big operations for profit, and doing it through abuse.

There just has to be some way—if we can write the legislation—there has to be some way in which the Department can be realistic and practical in enforcing the legislation.

Mr. HARRINGTON. The existing exemptions exempt a full-time or a regular employee of a nonprofit charitable organization, or a farmer who personally engages in the crew leader activity and solely for this employer, and on no more than an incidental basis. To my way of thinking, this would preclude the teacher of an agricultural class who brought the students out of an incidental basis.

Mr. GOODLING. As I say, practical, commonsense enforcement would do a lot for this.

Mr. HARRINGTON. Perhaps this is an administrative problem, and not one that we are tampering with, that needs legislation.

Mr. GOODLING. I suggested that yesterday to the Department, that there may be administratively a need for legislation that would make it much more palatable. And when you talk about crossing the State line, in many instances, for instance, in your county, it would be much better to get people from Howard County which may be 2 miles, or 1 mile away, than it would be to go 27 miles up your county, and bring them down to the southern county. Again, commonsense enforcement, commensense interpretation of the meaning, or the intent of the Congress. Some administrative changes would certainly help.

I would think that it would give them time to enforce the abuses that Ms. Hill and Mr. Tyler are talking about.

Mr. HARRINGTON. I would suspect that legislative changes rather than administrative changes may open Pandora's box and defeat the purpose for which it was originally intended.

Mr. GOODLING. Bureaucrats understand what the intent of the Congress is: unfortunately, to pass more legislation which, of course, usually leads to more bureaucrats and more problems.

Mr. FRETZ. I would like to try to respond very briefly to the situation of the high school students, Mr. Goodling, that are on the bean bus for a couple of weeks.

I think that most of us recognize that the farmworkers' situation is different. It is different, in large part, because we are dealing with high school students. We are dealing with a large class of relatively unsophisticated workers who have been subjected historically to exploitation.

I also have to mention the explicit exemption that occurs within 13 weeks of the calendar year in a 25-mile radius. It was not clear to me, in hearing some of the testimony yesterday, why the gym coach who comes for a few weeks in the summertime and takes his high school students for local picking would not fall within that exemption.

And if I correctly understood their representative, Mr. Stockman, there had been something in the nature of inquiries, or indications of some intention by the Department to scrutinize that activity for liability under the act.

I did not learn, or I was not aware of any actual application. It would seem to me that 99 percent of those cases would fall under the explicit exemption.

The second point was that I had understood the Department to say that in recognition of the intent of the Congress to create an exemption for the gym coach who is out with the students, that the Department was not hereafter going to spend a lot of its resources enforcing the act in that situation, and I would hope, in recognition of some of the indications from Congress, that it would try to marshal its resources and focus them elsewhere.

Mr. GOODLING. I think they got the impression from us yesterday, at any rate, that just because in the area in which they are written up in relationship to the legislation, in talking about the Pacific Northwest, it did not mean the Pacific Northwest. It just meant that any situation that would fall into that kind of a situation was not to be considered, and it was not the intent of the law, in the first place.

If you heard Mr. Smith read a section, and then later on, I referred to that very same section, it says that it should be made very clear that the committee does not intend, in any way, to destroy these traditional, historical conditions described above which might exist in the farmer-farmworker relationship as defined by the act, but they made it very, very clear that they have been enforcing that, and specifically said that they were not to be a part of this legislation, or that was not the intent of this legislation.

And I am saying that it would give them a lot more time to be concerned about the serious abuses with the small staff that they have, but in this business now, the staff is always too small. Sometimes I think it is confidence and not size that makes the difference.

Mr. Andrews. Certainly, one of the difficulties is that the Department did indicate that under some ideal circumstances, when no abuses were assumed, they would not seek to enforce the act. I think the phrase that they used was, "Due to lack of staff, we probably will not seek to enforce the act in that type of situation." The obvious difficulty is the gym coach about whom you are speaking. He has no assurance as to whether the Department "probably will or probably will not" enforce the act. The law says that he shall do these things, and hence, as he is law abiding, he is going to pay, in certain instances, $1,500 to get insurance.

In some instances, I am told, they have to go down to the county jail and get fingerprinted. That is a rather demeaning sort of thing that nobody else in the community has to do. It just seems to me that we need to give some assurance that he is not required to do these things, rather than just say that, "We probably will not attempt to catch you and punish you for something you are doing."

I think we should make the law clear as to where we expect the act to apply and where we do not intend it to apply.

We have got two extremes, and that is usually the case with issues relating to laws. It seems to me that one group is saying that it is against any exemption.

And then you get from the other group, "Let's exempt everybody we can exempt."

I think that what we are trying to do is to have a law that is enforced openly in the typical migrant labor type of situation. Let's not provide ways through which crew leaders can form associations. or do something that cannot be proven, so as to let that type of individual escape the law.

I do not think that we want to do that, but I think we do want to exclude some types of local work situations. In such situations, there should not be these strenuous, expensive, time-consuming, somewhat harassing, demeaning types of requirements. I see no reason as to why agricultural employers, or their supervisory employees, should be treated differently from other employers in other industries who engage in the same type of activities.

In other words, what I am trying to say is be reasonable.

I think the problem that confronts the committee, basically, is that we do not want to create the loopholes to which you and others have referred that would permit these onerous circumstances to continue. I do not think that any of us want to do that, and yet, we do not want to impose strenuous, expensive requirements on people where they really serve no purpose except to create more bureaucracy. That is the sort of circumstance in which we are now.

I hope that none of us are so adamant as to say that any change would be bad. I think that that is maybe an extreme statement.

I think that there would be others who would be seeking to find any means in the language to exempt as many people as possible. That is extreme.

I wish that we could all try to be reasonable.

Mr. CAUSEY. I want to ask two questions that do not go to the question of exemptions, but matters which were raised yesterday. I would be interested to hear from you.

The Department of Labor has not yet promulgated interpretative regulations with respect to the act. To what extent has that failure, in your opinions, affected the operation of this act? Furthermore, have you encouraged the Department of Labor to issue regulations? What has been the Department's response?

Mr. FRETZ. I can try to respond informally, Mr. Causey.

Yes, we have attempted to encourage the Department to expedite the issuance of the regulations which would interpret the changes wrought to the act by the 1974 amendments.

The only response we have received is that, apparently, there is a draft of the proposed regulations now extant, and that will be published at some time this year in the Federal Register, but we have received no more definite encouragement than that.

We certainly appreciate the encouragement which the subcommittee is giving to the Department to facilitate that. I think having something in writing, some standards that everybody can look at in defining some of these important generalized forms in the act would be extremely helpful to employers and workers alike.

Mr. MASINTER. We have also encouraged the Department to issue regulations to revise part 41 of the regulations. We would hope that that would be forthcoming soon. They think that it will clear up a lot of the concerns which were expressed yesterday, specifically with respect to the 25 and 13-week exemption.

I am sure that regulations can be drafted which would fairly protect the high school gym teacher that we talked about so much today who only works for 2 or 3 weeks in the summer. He is not likely to come within the act to begin with.

Mr. CAUSEY. My second and final question deals with the section proposed by Congressman Ireland with respect to insurance. If I understood the Department of Labor correctly yesterday, they were opposed to that section on the ground that state workmen's compensation laws, in some cases, do not provide a level of compensation equal to what the act requires, but they did say that they would perhaps look favorably upon state workmen's compensation laws which provide compensation which is equal coverage in excess of the act's stated requirements.

Would any of your organizations oppose a Department of Labor administrative action which would permit the situation as described in Congressman Ireland's bill in States where workmen's compensation laws would provide adequate equal coverage in excess of what the Act requires?

Mr. FRETZ. If that assurance could be provided, I think that the employee groups would be somewhat receptive to it.

I think that Congressman Ireland's bill correctly identifies a problem to be avoided, namely payment of double premiums, but I do not know that we have reached the point at which information available either to the Department or to the subcommittee is such that we could go ahead with Congressman Ireland's proposal.

We do not know, for example, about the relative levels of coverage under state workmen's compensation programs. California, which has a particularly progressive program, nonetheless, I am advised has standard liability limits. And vehicle accidents that occur within the scope of one's employment of $10,000 per individual, bodily injury or death, and $30,000 per accident.

I have obtained that information, incidentally, so I cannot vouch for its total accuracy.

That raises a question when we are talking about something like the bus accident in Arizona in which 19 farm workers were killed, and they were working on a day-haul basis, incidentally, for which $30,000 covering the entire 19 workers plus the others who were injured is probably inadequate.

I think that the Department, in gaining this information, ought to be considering some ways of dealing with inadequate levels and some other problems very quickly on workers' compensation.

There seems to be patchwork from State to State in the nature of workers' compensation coverage, particularly in agriculture. It affects workers who are going to be on this side of employment, and coming from that patchwork of coverage for accidents occurring out of State where compensation is obtained in the home base State.

I think that a lot of questions need to be addressed to that subject before we can say with some assurance that the proposal is sound.

Mr. Goodling. I have one comment, Mr. Chairman.

Mr. Andrews. Yes.

Mr. Goodling. I would like to direct this to Ms. Masson.

I think that your interpretation of Mr. Sarasin's amendment as to what he is trying to do, and what he is really trying to consider is different from his, basically. This, of course, would have to show up in the hearings and in the legislative decision, what he is specifically referring to.

And let's get away from the physical education teacher. We will go to a French teacher and get, for instance, the French teacher who is teaching 9½ months a year, and every summer, Mr. Ream from Ream Orchards asks him if he would transport local people to work during the summer.

He knows that if he wants that job, he can come back and get that job. I think that, basically, is what Mr. Sarasin is trying to get at. a bonafide employee, full-time or seasonal. He is talking about that person who works full-time, but that full-time job is only 9 or 10 months a year, and then he automatically comes back each summer to that same employer to transport those local people to help harvest the crop. I am pretty sure that that is what Mr. Sarasin is trying to get at.

Ms. Masson. As you interpret it there, that sounds fine, but if you use the same facts but leave out the qualification that his person is a teacher and just say that an individual comes back year after year * * * that is the way the act is written * * * then this would cover every crew leader of traditional abuse.

Mr. Goodling. Legislative critique would be made in relation to any kind of amendment. It would certainly not open that kind of Pandora's box.

In other words, he, specifically, as I understand his amendment, is trying to zero in on the business of that particular teacher who has those couple of months in the summer, and has been going back time and time again to help that local farmer haul local people to harvest the crops.

Ms. MASSON. What about somebody who is a truck driver for Minute Maid in Florida for most of the year, and during certain portions of the year, there are less trucks to be driven, whatever, and he is laid off. Then he acts as a crew leader and takes people up to New York or Pennsylvania, or whatever, to do that, and he engages in those unscrupulous practices. We have people who do that the way the bill is written.

Mr. GOODLING. I do not think that the legislative history would ever include those in Mr. Sarasin's amendment, or at least, his amendment would be cleared up before that time to make sure because my intent is my returning as a teacher every summer to the same employer, to the same farmer to haul the local people to work.

Ms. MASSON. I think that this amendment would have to be extensively written to be reflected in the law, and not the legislative history. Otherwise, you are going to have all kinds of litigation and arguments and Department enforcement according to the letter of the law, and briefs of some appellate court level and legislative history are going to come in. That seems to me to be a tremendous waste of resources.

Mr. GOODLING. There would be no misunderstanding.

Mr. TYLER. I would like to go back. You said to report abuse. Who do we report to? And if I had anybody to report to, I am concerned, concerned: if you report to somebody, will they do anything about what you report? What I want to know now is: Who do I report to?

Mr. GOODLING. Well, one of which you talked about, your legal aid, the Labor Department itself; if course, the State employment service of which there is an office in some of the areas.

Mr. TYLER. I do not think the State employment office would do anything because, for instance, I am working for a Pennsylvania florist; me and my brother work together, and him and his supervisor got into a disagreement. He fired me because he was my brother. I went to the employment office to see about it. He told me that I would have to go through the court.

All I want to know is why he fired me because of him and my brother. Just because my brother went out and robbed a bank, that does not say that Leroy would rob.

That is some of the points I want to know, if you go to people and tell them things like that. I went to the unemployment office. There was nothing done. They have not done anything yet.

Mr. GOODLING. From there, I would have gone directly to legal aid.

Mr. TYLER. They said they could not do anything, so I said: forget it. What I want to know is who do I go to directly. If legal aid cannot help me, who else do I go to. There has got to be somebody else.

Mr. GOODLING. I suggested one person to whom you could go to earlier: your Congressman.

Mr. TYLER. That is you.

Mr. GOODLING. That is me.

Mr. TYLER. When can I come? What time?

Mr. GOODLING. I am available at the drop of a telephone call.

Mr. TYLER. I will call you.

Ms. MASSON. If I could get one final word in with respect to the French teacher as an exemption in the act, expressly, the 13 weeks in the year, and he does not drive 25 miles; if he is doing the work that you described, he is already exempt under the law, and we do not need any change to protect him.

Mr. GOODLING. That is why we were saying yesterday that we thought there were some problems in the administration of the act in relationship with the intent of Congress, and some administrative changes may probably solve many of the problems.

Ms. MASSON. I think one might agree that the exemptions that have already been created for people in this situation are quite clear and quite specific. I think that would serve to protect them with perhaps some administrative changes.

Ms. HILL. Mr. Chairman, one last thing as far as registration goes, and that is with the present exemptions, the crew leaders that we have now in Philadelphia which do work in New Jersey and Pennsylvania would be exempted if the law was changed as it is now. They would be exempted. OK.

On the basis like what I am trying to say, the crew leaders, half of them, now are not registered. They are already not registered. They fall under a certain category, but they are not registered, but they have been recruiting people for years and years.

I know a crew leader, and I can say the name, Robert Dixon. Like he is a Philadelphia crew leader. He is not registered. His vehicle has been stopped many times for having fake tags and, nevertheless, the next day he is right back on the bridge. He is still driving the bus. He is not insured. Like he is taking people to New Jersey, to upstate Pennsylvania, and he has like people working under him, not just this one crew, but people working under him which are not registered.

What I am trying to get at is that I think that the law should be enforced as it is. The crew leader should be forced to register. It should be enforced as it is.

Mr. ANDREW. I think we all agree with that.

Mr. Goodling has to go answer another quorum call.

I have to go to my office to see the North Carolina Dental Association's representatives.

Let's recess for now and reconvene at 2 o'clock.

[Whereupon, the hearing recessed at 12:14 p.m., to reconvene at 2 p.m. of the same day.]

AFTERNOON SESSION

[The subcommittee reconvened at 2:04 p.m., the Honorable Ike F. Andrews presiding.]

Mr. ANDREWS. Let's begin the proceedings.

We have here Mr. Knisely. Come right up, please. All right. And Mr. Kingston.

Mr. KINGSTON. Yes.

Mr. ANDREWS. Mr. Ben Robinson. OK. That is it for this session. Is that correct?

It seems as if the people in Pennsylvania are very well aware that Mr. Goodling is here.

Mr. Knisely. That is correct.

Mr. Andrews. As an attorney, whom do you represent, may I ask, in connection with this matter?

Mr. Knisely. I represent Musselman's Fruit Products of Pet Inc.

Mr. Andrews. Then with you is Mr. Kingston of that firm.

Mr. Knisely. That is correct.

Mr. Andrews. Ben Robinson of the Agri-Food Association.

Mr. Goodling. I think it is the 19th century. * * * Russell Haig, a consultant with my firm.

Mr. Andrews. Gentlemen, if you will, we are asking that each person who testifies do so without a time limit, and in whatever fashion they deem appropriate.

I would just suggest that rather than read your statement, you just talk, and make it as brief as you can.

Those are not intended to be restrictions, just suggestions. Do you have any order in which you would like to appear, or would you like to appear as you happen to be listed here? Is that satisfactory?

Mr. Knisely. Congressman Andrews, I would prefer that Mr. Kingston would begin. I would appreciate it if he would testify first.

Mr. Andrews. Yes.

STATEMENT OF CHARLES C. KINGSTON, MUSSELMAN FRUIT PRODUCTS, PET INC., BIGLERVILLE, PA.

Mr. Kingston. My name is Charles C. Kingston. I represent Musselman Fruit Products of Pet Inc., located in Biglerville, Pa. I am the personnel director of farm operations.

In my testimony here I have listed a number of administrative duties that I have, duties that are normal to personnel directors such as hiring, discharging, handling grievances, wage administration, and so forth. All of these things are on a year-round basis for the personnel.

In addition to this, I also have the responsibility of hiring, housing, payroll administration, health care, and employee-employer relations for our seasonal harvest workers as well. We hire on an annual basis 150 to 250 people.

They come to us from Florida and Puerto Rico, and they are housed at farms located in south central Pennsylvania and in the eastern panhandle of West Virginia, the farms that we have in those locations.

I am not trying to tell you how busy I am by going through all of my duties, but only to imply that my work with seasonal and migrant workers is on an incidental basis as far as I can see it.

Musselman Fruit Products is a wholly owned division of Pet Inc. which is headquartered in St. Louis, but we have processing and orchard operations in Pennsylvania and West Virginia.

The orchard operations provide some, but not all of the raw material used in processing our complete line of apple products. Therefore, we use our fruit solely for our own operation, a salient point of section 3(b)(2) of the amendments of the act that we are talking about.

Mr. Andrews. You are covered by that act, I presume.

Mr. Kingston. We were told.

Mr. Andrews. The Department says you are.

Mr. Kingston. The Department of Labor says we are, I would like to say at this point, Mr. Congressman Andrews.

Mr. Andrews. What do you say?

Mr. Kingston. In 1965, 1966, back there, there are no records to substantiate this.

When it was first introduced, or when the Registration Act was passed, we tried to register to protect ourselves because we were not sure of the intent. We were told by the Department of Labor at that time that we did not have to register.

After the 1974 amendment came out, we could not understand what they meant by "incidental basis." We could not get any interpretation of that at the time.

We again asked about registering, and again, we were told that we did not have to register. Last year I had arranged to register, and I was wondering where my registration card was. I asked him about this under the new interpretation by the Department of Labor because we are a corporation. We are supposed to register.

Mr. Andrews. Has that to do with acting personally?

Mr. Kingston. Yes, it does. In my testimony, I am trying to point out various things in this testimony to show that while we are a large corporation, and we are a large corporation, we do act personally in regard to these people through my office, my particular position, while they are there. With respect to the various things that I do, I do not see where what I do in relation to seasonal farmworkers is any different from what the sole proprietorship handling the same situation does, and my question is, simply: Why?

Mr. Andrews. Do you deal through any person that anyone might remotely construe as being a crew leader?

Mr. Kingston. We do, but they are registered crew leaders. They have their registrations. We do not use them in the typical sense of the word as crew leaders. Primarily, they are used to refer to us. They are used to perhaps transport people up from the South during the summer before they come and take them back. When they are here, those men, the crew leaders become the employees of us, getting their own money, getting their own checks, the same as every other person within that crew does.

Mr. Andrews. Every person in the crew is paid by you?

Mr. Kingston. Each member, each crew, each employee of Musselman, no matter who he is, gets his own check with a pay slip attached noting his work on there, whether it is piecework by which he gets paid. It is indicated on there: How many units he picked, how many hours he worked, which complies with the piece rate provision of the minimum wage law. Yes, we do.

Mr. Andrews. I wonder if the people who testified on the panel this morning are still here.

What I would like to see is for as many of us as can—you see, we are getting two sides on this—it might be possible that afterward, we can formally discuss it, and so forth.

So as of now then, your company is required to register under the act.

Mr. Kingston. I would like to say, Congressman Andrews, that we did register last year. We at least applied for registration, and after our visit with the wage and hour people, we went through the whole procedure of having the application notarized. We sent it in. We never heard a word from them, no thank you, no receipt, no anything and, you know, to me, there was all that fuss about this, and then they totally ignore an application. This is contradictory. I wonder what their real intent is, and what they are trying to prove. If they do want us to register, then why don't they accept the registration when it is sent in.

Mr. Andrews. Mr. Goodling, can you answer that?

Mr. Goodling. I was trying to get some of those answers yesterday.

Mr. Kingston. This is, you know, the irony of the whole thing.

Mr. Goodling. He comes to his Congressman. I will pursue it, though, to see if I can find the answer.

Mr. Kingston. I point out in this testimony various things. As you said, I do not think it is necessary to read it. I would hope that you have already read it, sir.

I would like, however, to point out some things that the proponents of the 1974 amendment point out. They are quick to ask us, when we do complain about this, why we are reluctant to register. They do not understand why. They say that this is simply an administrative change, and it does not cost any money, there is no fee.

I would like to say for the record that while there is no fee attached, there are hidden costs. After reading the regulations in FLCRA, I find that in order to do it for the number of employees that I have, 200, it would necessitate hiring a complete staff member to just to administer this at a cost of $10,000 to $12,000, and everything that goes along with a staff, office expense, so forth and so on. I can see, simply, something like $20,000 in additional cost simply because of the proponents who say there is no cost, but there is a $20,000 administrative cost added there.

I think the most important fact in the monetary aspect of it would be the complexity of the rules and the regulations, upon reading them, and I am speaking now not only for the corporation, but for any individual farmer as well. As to the monetary fines attached, I can see a tremendous amount of money there simply through ignorance, or what-have-you.

It would be very easy to find any farmer in violation because of these things being subjected to several thousand dollars in fines.

Mr. Andrews. For example, what did you have in mind? Specifically, now, how can that occur?

Mr. Kingston. Well, as I read the regulations, if I were found in violation of operating without a registration and I have 200 employees, I would be liable of fines upward of thousands of dollars for occurrence. As I understand the Department's interpretation of "occurrence," each and every person in violation, which would be $200,000 right there, if my arithmetic is correct. That is how I read that law for that fine.

Mr. Andrews. I believe that someone from the Department said yesterday that they have not authorized the schedule. I believe the amount is $100. Is that correct? Or is that the amount of the fine usually.

Mr. Berns. $400 and $1,000, but where the individual who is responsible or obligated to register under the act, from my understanding of it—I am with the Solicitor's Office. A $1,000 maximum would be assessed for failure.

Mr. Andrews. Regardless of the number of employees.

Mr. Berns. That is correct. For the failure to register with the Solicitor's Office.

Mr. Kingston. I stand corrected on that, sir. I was under the impression that it was per occurrence, meaning per individual person. This is what the wage and hour inspector told me. So I apologize for that.

Mr. Goodling. Is he from York County, that famous wage and hour inspector?

Mr. Kingston. No. He was from Harrisburg, as a matter of fact. He is from Harrisburg.

Mr. Andrews. I would not, myself, see any logical legal means whereby you could say that failing to register would be an occurrence, or that being construed as being an occurrence. And if you failed to register, I do not see how that could be an occurrence multiplied by the number of employees. I do not see the relationship. It seems to be that would just be an occurrence when you failed to register.

Mr. Kingston. The occurrence being a failure.

Mr. Andrews. And the failure being a singular word, I do not see how you can multiply that. I do not see any rationale for that to be multiplied by the number of employees that were there on that particular day.

Mr. Kingston. It did not make sense to me either except that none of these makes sense of this, so one little bit would be just as erroneous as the rest I would suspect, as I feel that historically, it has been through the unscrupulous, through the so-called "body brokers" in this business whom the Congress was really intent upon regulating when they passed the 1964 law, and our company applauded this because we felt it was a good thing for the entire industry.

However, by the narrow, restrictive interpretations of the 1974 amendments, the Department of Labor is now assigning a much larger group of people who are considered as farm labor contractors, and I fail to understand why.

My purpose for testifying here today is to point out the fallacy of the Department of Labor's interpretation of the 1974 amendments to FLCRA, and to show that even though we are a corporation, we can and do act in a personal sense.

Mr. Andrews. All right, sir. So your principal objection then is that the word "personally" has been interpreted to exclude corporations.

Mr. Kingston. That is correct.

Mr. Andrews. Then if you were operating under any other entity status, you think that you would be excluded.

Mr. Kingston. That is right.

Mr. Andrews. You are simply being penalized because of the corporate structure, because of some interpretation that includes you, whereas you should be excluded, in your opinion.

Mr. Kingston. That is correct, essentially.

Mr. ANDREWS. All right, sir.

Who is next?

Mr. GOODLING. If the Labor Department could tell us now, having heard his particular situation, should he be registered, or should he not be registered. Are you saying yes? Is the Labor Department saying no, or not responding? How do you see the situation? Should he, or should he not be registered?

Mr. BERNS. I would say, on the basis of the fact that we do not have enough to work with, the only thing he has indicated is the fact that he operates the personnel department for the company, and he is in charge of recruiting and hiring these farmworkers.

Now we would want to know, under the circumstances, how does he go about recruiting these 150 or 250 workers. In he using a farm labor contractor, or more than one in order to recruit these workers? Does he advertise in the local newspaper? Just how does he go about the recruitment in order to get these 200 workers? How? That is important to us, and that is important under the act.

Mr. GOODLING. I am only asking the question because as he said, he has indicated that you have not responded to his application, but the wage and hour law says that he has to have a license, so it is rather confusing for him.

Did you not say that first of all, by phone, they had told you that you did not have to, and then you have submitted it, and they have not responded to it?

Mr. KINGSTON. That is correct.

[The prepared statement of Mr. Charles C. Kingston follows:]

PREPARED STATEMENT OF CHARLES C. KINGSTON, MUSSELMAN FRUIT PRODUCTS, PET INC., BIGLERVILLE, PA.

Good afternoon!

My name is Charles C. Kingston, representing Musselman Fruit Products, Pet Incorporated, located in Biglerville, Pa. I am Personnel Director of Farm Operations, and among my many duties, I am responsible for the hiring of 150–200 seasonal farm workers who are housed at farms located in south central Pennsylvania and in the eastern panhandle of West Virginia.

While my position as Personnel Director includes duties relating to 60–70 full time year-round employees; duties such as: hiring, discharging when necessary, handling grievances, wage administration, administration of fringe benefits, house rental for the above number of employees, serving on various committees at a company level, trade association level and state governmental agency level, monitoring of state legislation as it affects our division in Pennsylvania, and the many other minor duties of a Personnel Director, in addition I also have the responsibility for hiring, housing, payroll administration, health care and employee-employer relations for our seasonal harvest workers.

I assure you that I am not trying to impress you as to how busy I am, but rather that my work with seasonal farm workers is only on an incidental basis, a key point of section 3b3 of the 1974 Amendments.

Musselman Fruit Products is a wholly owned division of Pet Incorporated, having processing and orchard operations in Pennsylvania and West Virginia. The orchard operations provide some, but not all of the raw material used in processing our complete line of apple products. We, therefore, use our fruit solely for our own operation, a salient point of Section 3b2 of the Amendments.

While we are part of a large corporation, we do maintain independent management of our employees and in particular, of our transient workers. Local and complete personnel management of seasonal farm workers is handled by my office, while complete supervisory management is by our orchard production people.

Some hiring of new fruit pickers is needed every year. There is a nucleus of people, some of whom have been working for us for as many as 10–15 years, who return each year to work on our farms. It is these key people upon whom we rely, to refer new people to us, when necessary. Actual hiring is done when they arrive in Pennsylvania by me or a member of company management. At no time, however, do these key people act as agents for our company. Several of them do have an additional responsibility of maintaining order and cleanliness in our labor camps, under the direct supervision of our foreman responsible for that farm operation. For this duty, these people are paid by the company.

I would like to point out here, that each seasonal employee receives his own paycheck each week and also a payroll slip noting his amount of boxes picked, the piece rate per box and the total earnings less any legitimate deductions. There is also recorded on this pay slip the amount of hours each person worked each day so as to comply with the piece rate provision of the minimum wage law.

I try to maintain, at least a weekly contact with our pickers while they are working on our farms, and after they return home, communications are continued, at least, with key individuals among them, by telephone and letter. Personal visits at their homes in Florida, are made each year with as many employees as is possible. This practice is not abnormal since it is company personnel policy, that personnel directors at our three processing plants as well as our farms, make one and possibly two personal visits in the homes of all seasonal employees each year. This applies to local seasonal plant people as well as transient harvest workers.

While these workers are at our Pennsylvania and West Virginia farms, we make a sincere effort to be as aware as possible of their individual basic needs, recognizing that they are temporarily living in an unfamiliar environment, usually having no other relationship with anyone, other than each other. WE cooperate fully with our state social agencies such as Health, Welfare, Education and Employment Security to see that the needs provided for by these agencies are immediately available to all of our seasonal employees and their families. We participate in the cultural life of our seasonal employees, by providing buildings for churches and schools. If I may, I would like to elaborate on this statement. We leased a building, formerly used as a dwelling house, to the local Roman Catholic Diocese, to be used as a Spanish speaking church. Their only cost is a nominal $1 per year rental. WE pay the cost of electricity and maintain the building. This church is used primarily for Puerto Rican seasonal workers living not only in our camps, but living in camps in all of Adams County and indeed in surrounding counties as well. We have also leased land and buildings to the State of Pennsylvania and these are presently used as a Kindergarden and Day Care facility for children of working mothers.

I mention all of these things, only to point out, emphatically, that, while we are a large corporation, we are not insensitive to the needs of our individual employees and that each individual employee is treated as an individual person. His problems, no matter how small they may seem to be, are viewed as an important factor in his life, and we work to help him to solve these as quickly as possible.

Proponents of the 1974 amendments are quick to point out they cannot understand why we object to registering as a farm labor contractor. We are told that this is simply an administrative activity and that there is no cost involved. It is true that there is no monetary fee to be paid. However, there are hidden costs. The Department's rules and regulations are so involved that, it is possible that we would have to hire an additional staff person simply to administer this. All employees who transport any seasonal worker for reasons relating to business, will have to be issued an employee identification card with transportation authorization. This requires a physical examination every three years for perhaps 14 people. The company of course, pays the cost of these examinations. There are other small costs such as this which taken together add up to a substantial amount. However, that which causes us the most concern, is the long list of offenses for which one can be fined and the high fines involved. It could be very easy to find any farmer, regardless of the size of his operation, in violation and subjected to several thousand dollars fine because of the complexity of these regulations.

I do not think that the operation, described in the foregoing testimony, differs in any way from that of a sole propreitorship or a partnership and these entities are excluded from having to register as a labor contractor while, we, as a corporation must register. Why? We do not act as a farm labor contractor in the traditional sense

Historically, it has been unscrupulous crew leaders, the so-called body brokers, who have exploited seasonal farm workers and these are the individuals who Congress intended to be regulated by this act. We have no objections to this; in fact, we applauded this Congressional action. However, by the narrow and restrictive interpretation of the 1974 amendments, the Department of Labor now includes a much larger group of persons as farm labor contractors and it is this to which we object. My purpose for testifying here today is to point out the fallacy of the Department of Labor's interpretation of section 3b2 of the definitions of the 1974 amendments of FLCRA. To exclude corporation from section 3b2, simply because, as the Department interprets this section, corporations cannot act personally, is wrong. The foregoing portion of this testimony shows that one corporation, no matter how large it is, can and does act in a personal way in its relations with its seasonal transient employees.

STATEMENT OF GARY KNISELY, COUNSEL, MUSSELMAN FRUIT PRODUCTS, PET INC.

Mr. Knisely. If I may respond to the question, or the statement by Mr. Berns, Musselman Fruit Products, while being a division of Pet Inc., of St. Louis, has a very independent management, structurally, as far as the seasonal workers are concerned.

Management at Musselman's is local. I am the local counsel. I am a privately practicing attorney who handles the matters that the corporate counsel in St. Louis do not handle due to the distance involved.

Mr. Kingston is the personnel director of Musselman's, and he, personally, visits with the key people in Florida every year.

Through the years, we have developed contacts with individual seasonal farmworkers. In fact, many of the seasonal farmworkers now are full-time managers on our farms, Mr. Chairman. We are primarily here as a producer. We are farmers.

The corporation, of course, is a processing operation, but we own thousands of acres which are strictly our own, and we act as a farmer, a corporate farmer.

We feel that the Department of Labor is making a distinction of form rather than substance simply because section 3(a) of the act, or 3(b)(2) says that we are a corporation, and that we should be excluded because we cannot act personally. That is a fallacy to us.

We look at each of our competitors, as far as producers are concerned, and there is no distinction between us at Musselman's, and the individual proprietor down the street who, apparently, at times, has more seasonal workers than we.

For the Department of Labor simply to take the easy way out, and say that simply because you are a corporation that you must be involved and registered under the act does not seem to fit the purpose and the spirit of what the Congress intended.

Interestingly enough, in my testimony, I say that we come before the committee to testify as a producer of food products, requesting that exclusion from the registration requirements. When, in fact, you look at the purpose and the policy of the act, you see that the act was originally passed to require registration of labor contractors to protect us, the farmer. It seems to be completely turned around.

The 1974 amendments, in reading the Senate report, specifically seem to deal strictly with and solely for your own operation, and they try to have the amendments reflect the economic realities, or the relationships between corporations, between farmers, between processors, and they said nothing at all about this very important word that we all seem to be talking about, "personally."

I have looked over past testimony that you have heard, and I agree with Representative Sarasin and the other people who have testified, that the word "personally" seems to be an inadvertent assertion. It was not discussed in the Senate report. It was not discussed in the House report. But yet, this is what the Department of Labor is hanging its hat on, saying that the large corporation who has several employees involved in its administration of seasonal farm work cannot act personally.

I think that if any of you gentlemen would visit our operation, you would see that Mr. Kingston and his staff have a personal relationship with our migrants. There is nothing informal or indifferent in our approach to the seasonal workers.

The seasonal farmworkers in the field are treated no differently from the ladies and the gentlemen and the college students who work in the processing plants in our seasonal operation.

For the Department of Labor to make this distinction seems absurd.

In view of the fact that it has taken 3 years for the Department of Labor to change its interpretation, that somewhat illustrates the confusion within the Department itself.

One attorney that I spoke with in Mr. Marshall's office made the comment to me on the telephone that it seemed to be the policy of the Department of Labor that they would require everybody to register in view of what they consider their dissatisfaction with the vagaries of the act. This is one way to get the constituents upset, and to come before you, as Congressmen, in an attempt to have the act clarified for them and the Department as well.

I would think, in view of the fact that we have two district courts having completely contradictory decisions on very narrow issues such as section 3(b)(2), that that is a very good illustration of the complications and the problems that this act represents.

Judge M. D. Crocker, of whom I am sure you have heard, in the *U.S. Department of Labor* v. *Silver Creek Packing Co.* case, decided that, of course, a corporation was personally exempt because of its personal approach.

Silver Creek had an agreement with the farmer during the harvesting season. We even have a closer relationship. We actually own the land upon which we harvest.

For the opponents or critics to say that we need the registration because we simply have got to protect the seasonal farmerworker in that area is somewhat weak from the standpoint that they are protected, as far as housing situations are concerned, with OSHA. They are protected, as far as their compensation and the piece rates by the Wage and Hour Division of the Department of Labor. They are protected, as far as illegal entry is concerned, from the Immigration and Naturalization Division.

They are protected as far as our State Department of Environmental Resources is concerned, which is four times more effective, as far as we are concerned, than the Department of Labor and the local health departments.

Musselman's has a very close relationship with every social agency, and we do intend, and we have in the past become involved in the private lives of each of the migrants.

We have built churches. We have built community playgrounds. We have helped in relocation.

Without going into a long list of what we have done, and we do not want to make this a long list as an indication of what we have done, I do want to say that we are simply not down here with a bunch of platitudes, to say that we have done something when, in fact, we have not.

This is what irritates us as a company, that we, as long as 20 years ago, at least, in fact, became very closely involved with our workers, and it seems ridiculous that we have to spend more money in a very competitive market in an area which is already regulated by several other Federal agencies and State legislation.

Mr. GOODLING. In your attempt to find out, did you have any communication as to where you stand with relation to registration?

Mr. KNISELY. We have not had any response at this point.

Mr. GOODLING. When did you submit the registration application?

Mr. KNISELY. That was made in 1977.

Mr. GOODLING. You have received no response to the effect that it has been accepted.

Mr. KNISELY. That is right. Actually what we are relying upon is the telephone. I stand corrected.

We did submit a bill in September. We had a telephone conversation with the Solicitor's office at which time they had indicated to us that once we were registered, that we probably would not hear from them for at least 2 years.

Mr. GOODLING. Once you were registered.

Mr. KNISELY. That is right. They were very concerned with registration. They felt that as long as they had registration, this was satisfactory. They were convinced that OSHA and other arms of the Department of Labor were adequately regulating us, but they felt that we should be at least registered, but, of course, due to lack of manpower then, as far as going into more particular areas was concerned, they felt that registration was top priority, which was understandable, but we would probably not face any inspection or investigation until sometime down the road.

Mr. KINGSTON. May I make a comment here?

Mr. ANDREWS. Yes, sir.

Mr. KINGSTON. Based on this application, we were also told that the basic application was for crew leaders' registration, which would give us the crew leader's number, after which time we use that number to get all other supplemental certificates. So actually, without that number, we are still in violation because our people that transport these workers in our vehicles for any company business at all must have this employee registration as well, and they do not have it, and they cannot get it because we do not have the necessary form from the Department of Labor to apply for it. So consequently, we have tried this. This is only one stop of which we can go no further because of the lack of response.

Mr. ANDREWS. Well, I do not know that it would serve much purpose to amend the act to pursue the individual instance to which you refer. I could say seriously that if you had sent some customer a bill, or a customer legitimately owed you a lot of money such as you say may be involved here in November, and you are now in the middle of February, and you had not received a check, or you had no knowledge of their having received the bill, I dare say that you would have followed it up long before this, and asked: Did you receive it, or not? But you have, apparently, chosen not to do that.

I am not going one way or the other, but I cannot believe that you are pursuing an effort to become registered. I surely think that the application might have gotten lost in the mail, or the fact is that you have made no effort to find out.

Mr. GOODLING. As you said, on two occasions, you were told you were not.

Mr. KINGSTON. That is right.

Mr. GOODLING. You did not need to register.

Mr. KNISELY. That is correct.

Mr. GOODLING. It is the Wage and Hour gentleman who told them that they had to register.

Mr. KNISELY. That is correct.

Mr. GOODLING. That is the confusing part. What is the other case about which you talked. You mentioned *Silver Creek*, and you said that another judge ruled in another matter.

Mr. KNISELY. The *Souza Brothers* case, which, I believe, you have heard of before. You are familiar with that.

Mr. GOODLING. The *Souza Brothers* case.

Mr. KNISELY. The *Souza Brothers* case.

This was in the central district of California, November 1977, in which the court held that the corporate entity did require registration simply because the corporation could not act personally, and there were some violations of the act, as far as I understand: Payroll deductions, housing conditions. There were some flagrant violations there.

Mr. GOODLING. Did either of these cases go higher?

Mr. KNISELY. I am not aware of the *Souza Brothers*, but I do know that the Department of Labor has asked the Justice Department to take an appeal on the *Silver Creek* matter.

Gentlemen, we are simply here to simply have the removal of the word "personally." We feel that at the very least, the requirement of every corporation to register is unnecessary because there is existing legislation to protect the seasonal farmworkers; that historically, the act was to regulate that crew leader who took a band of workers from State to State to work at farmers' fields.

We are acting as a farmer, and simply because we have filed a charter with the Corporation Bureau in Pennsylvania does not seem to make that much of a material difference, and we should now become registered.

We feel that there is adequate protection, and we do not feel that this is historically the intent of the Congress.

Mr. GOODLING. As I read yesterday from some of the material, the 1974 amendments were passed very specifically to indicate, as the act did in 1964, that it was not the agricultural producer that we were going after.

Mr. KNISELY. That is right.

Mr. GOODLING. It appears that we have not gotten into that business. It was supposed to be that unscrupulous crew leader that we were, in fact, calling attention to. At least, that is what it says, I was not here when all of this was passed.

Mr. KNISELY. It would seem, at the very least, that the Department of Labor would attempt to look at each corporation on a case-by-case basis.

They have made contacts, and they have written correspondence from Congressman Hillis' office and from Ray Marshall, that, in fact, the Department of Labor does look at the individual farmer; that if it is a small, closely held operation consisting of bloodline relatives, that the Department of Labor will allow them to be excluded, but they come in the game by degrees like second cousins.

If we have unrelated people, if we have more than 10 stockholders, that type of game seems to be so futile.

It would seem that if the Department of Labor has time to investigate the small farmer, they should have time to investigate the large corporation also, and make a determination on a case-by-case basis rather than simplifying and saying that you are all included with the attendant costs involved for each of us.

Mr. ANDREWS. Well, unfortunately, none of us can answer that question. We are not in the position of having experience with that. I am prone to guess that that is what they have done. I am prone to guess that they just say: "All of you register, and that is all we are asking you to do."

If, among those who register there are complaints, or there are some indicia, then they follow up.

In your case, apparently, I am just guessing that you have not registered. They perhaps know enough of your operation credits which you, apparently, rightfully claim. I guess that perhaps they just know then, and do not care. Again, there is limited help with which to press or pursue that.

They know that there have been no complaints, I assume, and I guess they assume that nobody is being mistreated there, so maybe they have used the discretion to which you are referring, but I should guess wisely.

Mr. KNISELY. But Congressman Andrews, of course, we do not want to have the costs involved. You know, we are talking about $20,000 extra a year. That might be minuscule for the corporation, but nevertheless, it does run into additional costs which are reflected in our intercompetitive arena, and the fact of the matter was that the Department of Labor was very well aware prior to that of our registration.

I made inquiries of all levels, asking why they would justify that, and why now, 3 years subsequent to the amendment, we were required to register and, apparently, the story given to me which seemed to hold the most water was that the regional office did not understand the office's interpretation for 3 years, and it was their fault. And they did make the distinction that simply because we were a large corporate farmer, they did not care whether we gave free Cadillacs and Pontiacs to the seasonal workers. That did not make a difference, but they were going to make a difference with the people down the road who were a small, closely held corporation, that they did not have to register.

Now, if they can make that type of distinction, it would seem to me that they would make that type of distinction with a largely held corporation.

Mr. GOODLING. This testimony becomes conflicting. This morning we had a young chap who works in an operation under a crew leader here in an outfit that I have never heard a complaint about who seems to be getting involved in the $10,000 to $20,000 bit of nonsense, and yet, the lad this morning, apparently, feels that he can get no justice working in an operation under a crew leader, which is what the legislation is intended to protect.

Mr. KNISELY. In Pennsylvania alone, to look at the seasonal farmworker operation is to look at one of great complexity, to look at the fruit operation, the mushroom operation, the vegetable operation, and to make any type of analogy, in many respects, breaks down, and that is one of the problems, the complexity of how each of us handles our seasonal workers.

[The prepared statement of Mr. Gary Knisely, Musselman Fruit Products, Pet Inc., Biglerville, Pa., follows:]

PREPARED STATEMENT OF GARY KNISELY, MUSSELMAN FRUIT PRODUCTS, PET INC., BIGLERVILLE, PA.

Good afternoon.

My name is Gary Knisely and I am testifying today in my capacity as counsel for Musselman's Fruit Products, Pet Inc., of Biglerville, Adams County, Pennsylvania.

The committee has just heard the testimony of Charles Kingston, Personnel Director for the seasonal farmworkers hired by our company. Surely Mr. Kingston's statements have illustrated the personal relationship and rapport that we at Musselman's have had and continue to have with our seasonal workers.

I am here today to request necessary amendments to Sections 3(b)2 and 3(b)3 of the Farm Labor Contractor Registration Act. I believe that these requests are consistent with the intent of Congress when the Act became law in 1964 and amended in 1974. We all know that the purpose of FLCRA was to eliminate the exploitation of producers, migrant agricultural laborers and the public by irresponsible labor contractors or crewleaders.

Interestingly enough we come before this Committee to testify as a producer of fruit products, requesting exclusion from registration requirements of the Act, when in fact the Act was originally passed to require registration of labor contractors to protect us.

The 1974 amendments were supposedly passed since the House Subcommittee on Labor realized that abuses by the Farm Labor Contractors continued despite the 1964 Act. The purpose of the 1974 amendments was to improve the enforcement of the Act by the Department of Labor. Unfortunately the Department of Labor has seen fit to interpret the 1974 amendments broadly in giving it the right to regulate every facet of the lives of seasonal farmworkers.

Section 2(b) of the Act declares the policy of the Act to be to regulate and control the activities of irresponsible farmworker contractors who travel from state to state with a band of beholden workers. It is this independent contractor who historically has abused the rights of the workers, not the farmer-producer who hires these workers for the harvesting of his crops.

A brief review of Senate Report 93–1295 of the Committee on Labor and Public Welfare provides the necessary background of the purpose of the 1974 amendments. It was the Senate Committee which did the yeoman's share of hearings with respect to these amendments.

On page 6447 of the report, Sections 3(b)(2) and 3(b)(3) are addressed directly. No emphasis is made with respect to the legal distinction between a proprietor farmer and a corporate one. Rather the emphasis is on the phrase "solely for his own operation". The Committee clarified the definition of this phrase by looking at the economic realities of agricultural production and processing.

The Committee's report specifically states that any full time or regular employee of any entity referred to in Section 3(b) (1) or (2) who utilizes a limited portion of his time for such activities is not a farm labor contractor pursuant to the Act. Why then does the Department of Labor continue to make a distinction with respect to form rather than substance?

Representative Sarasin of Connecticut, at the time of the introduction of H.R. 8894, stated that he thought that the insertion of the word "personally" in Section 3(b)(2) was an inadvertent carry over from the House Bill prior to the 1974 amendments. The absence of any explanation in the Senate report implies such inadvertence.

In correspondence received by my company from the Regional Solicitor's office in Philadelphia, Pennsylvania, the U.S. Department of Labor, admitted that a small farmer who incorporates can still remain excluded from the registration requirements of the Act while a larger farmer corporation cannot. In this example the Department of Labor looks to the substance of the matter rather than legal form. Why is not this same type of reasoning applied to each larger corporation?

Amendments to Sections 3(b)(2) and 3(b)(3) of the Act must be passed to rectify such unequal and arbitrary enforcement. Presently many federal courts are involved in interpreting this position with contradictory results. In *U.S. Department of Labor* v. *Silver Creek Packing Company*, the Eastern District of California, Judge M. D. Crocker heard testimony establishing that Silver Creek was a corporate farmer who, pursuant to a marketing agreement with the farmer, picked, hauled, packed, shipped and sold farm produce. Judge Crocker, in a very wise decision held that since Silver Creek had complete control over the crop and hired seasonal workers solely for its own operation, said corporation was excluded from the Act. The Judge relied on Section 3(a) of the Act which included corporations within the definition of person.

In reviewing the statutory and regulatory coverage of seasonal farm labor one sees the Occupational Safety and Health Administration regulating temporary labor camps, Immigration and Naturalization Service, preventing the employment of illegal aliens, the Wage and Hour Division of Labor, insuring adequate compensation and working conditions. Of course I have not specifically mentioned the concurrent and duplicative regulation by state and local authorities. I find no merit to the argument that the Act must cover corporate farmers, since there are inadequate legislation and regulations. The goal should be better enforcement of existing legislation, not passage of additional legislation.

In conclusion, Musselman's Fruit Products supports H.R. 8894 which provides that the word "personally" be stricken in Section 3(b)(2). Congress never wanted to regulate the farmer who employs directly but only the middleman who takes advantage of both the farmer and the seasonal worker. Today we urge your Committee to support this amendment to Section 3(b)(2) of the Act.

Thank you.

Mr. ANDREWS. All right.

You are next, Ben?

Mr. ROBINSON. Anytime, sir.

Mr. ANDREWS. All right.

STATEMENT OF BEN ROBINSON, EXECUTIVE DIRECTOR, AGRI-FOOD ASSOCIATION

Mr. ROBINSON. Mr. Chairman, I am Ben Robinson, executive director of the Agri-Food Association, P.O. Box 1401, Rocky Mountain, N.C. 27801.

We are terribly happy to have the opportunity of coming here and appearing before your committee today. I am sorry that I did not have the opportunity of hearing some evidence this morning that was presented.

It seems to me that most of this depends on the individual situation, that we are all involved in North Carolina operations. We have a very diversified operation there. The fact is that we have tobacco, a large range of vegetable crops, fresh fruits and produce across the board.

We probably have the largest use of migrant labor in the harvesting of these crops than anyone in any State in the Union.

According to the North Carolina Employment Security Commission's records, we had between 20,000 and 30,000 migrants in North Carolina during the harvest season of 1977.

This seemed to be a very broad range to have to differ with. If we can be 50 percent off there, we can also be 50 percent off on some of the interpretations that these boys are handing out, and the fines that they are assessing, or the penalties that they are assessing.

We feel that a good deal can be brought about by changes in this act, changes that would allow some of our former local haul contractors to operate without the impediment that they have, and the Crew Leader Registration Act as it was amended in 1974 whereby we could have these people that were forced out of the labor stream, and we estimate that to be approximately 10,000 in North Carolina alone.

If this thing were amended to where we could put these people back in with a 75-mile local haul statute, and we feel that it would be very practical, we could put a good portion of these 10,000 people back to work. We could reduce this interstate migration by probably 50 percent.

If we do not have something done to bring this about, we are going to be forced into a total mechanization program, and when we do that, these wives here, these lovely women that enjoyed fresh produce for so long are going to have to do without most of the fresh produce that is grown in eastern North Carolina. Seventy-two hours is about as long as you can depend upon its being fresh produce to be put in actual use on the table before spoilage by mechanized housing.

The only exception that we have found so far has been yams. The yam industry, we figure, is a great expense in refrigeration and other chemical treatment. We can hold it off a little bit longer, but it certainly will not be practical nor economically feasible, and we feel that there is too much labor out there that has been put back on social programs that we could still use.

We interviewed a number of these people that formerly were in the day haul situation that would love to be back out there and able to work in the agricultural community with subsidized aids as they have before. They do not like social service programs, but they have been forced into that area.

In one particular area I found that 75 percent of the people that were eliminated from the day haul crews went back on social services. This is a horrible thing to have to face when you start thinking in terms of what the local government and the State and Federal Government is putting into social services to start with.

Are we trying to set up and subsidize the total social service program, or are we trying to put these people back into the work stream where they can have a little pride in what they are doing, and earn an honest living?

We also have done a little bit of studying on this thing, and as we have pointed out here, we would suggest that every effort be made to combine the agencies that are involved in the migrant labor movement, put them all under one roof.

I have one grower that spent 23 days last summer with State and Federal agencies in auditing, monitoring and checking his migrant labor crews, and they always showed up right in the middle of harvest when we do not have the time. And this is a great inconvenience. Every grower in North Carolina is having the same problem that many of my members are having. Sooner or later, the grower is going to be forced out of business because of economic reasons.

I cannot tell my bookkeeper and my attorney, or any of my superintendents loose long enough to stay with these people a week or 10 days at a time.

I am like the gentleman who is sitting next to me. The cost, administratively, is just too high.

Mr. ANDREWS. Let me interrupt you. We have a vote on the House floor, an important one. I am going to have to run and vote, and come back. We will come back as soon as we can.

Mr. GOODLING. All of you who have not had your exercise, can have it now.

[Whereupon, at 2:43 p.m., the hearing recessed until 3 p.m.]

Mr. GOODLING [presiding]. The committee will come to order. We are going to move ahead. The chairman will be back shortly, if you would like to continue with your testimony at this time.

Mr. ROBINSON. On the continuation of the testimony that I had previous to this break, the other problem that we would like to bring to the attention of this group is the proliferation of agencies and regulations that seem to make it more difficult rather than easy to obtain migrant workers.

In some instances, a grower may have to deal with 7 to 10 agencies during the course of a planting and harvesting season. Many of these regulations of these agencies are very vague and, to say the least, not all that easy to understand. Many times, agencies attempt to enforce each other's regulations.

In North Carolina, let me illustrate my point: When a grower puts in his order for migrant workers with the Employment Security Commission, he must get the housing preinspected using OSHA regulations which, in North Carolina, is the responsibility of the State Labor Department. However, if the well, or the kitchen facilities are involved, he must get those inspected by the local Health Department Sanitation Branch.

The grower must then make sure that there is not a local ordinance that puts additional requirements on him. We must realize that all of this takes a great deal of time, money, and a number of workers to facilitate that which is required.

After the workers arrive, there are other factors such as the inspector from Wage and Hour, Fair Labor Standards, the Health Department, and local people arriving on the scene.

This maze of inspectors has caused apprehension and mistrust on the part of most of the growers and, in many cases, makes them just give up their attempts to improve the living and working conditions of the migrant workers which, in the first place, was why this bill was passed.

We would like to recommend that all laws, regulations and agencies be combined under one umbrella, so that each grower could go to one building and see one person in regard to his farm labor needs and their problems.

This would do more to foster the cooperation and to improve the living and working conditions than any other thing we could recommend. This recommendation comes from many years of working with all segments of the agricultural community.

Another problem that we wish to bring to your attention is the complete reliance on monetary penalties of the regulatory agencies.

If an information and voluntary compliance program could be established so that everyone could know what is expected of him, every effort would be made to comply. Monetary penalties could then be used in extreme cases with a much more profound impact. We recommend that the statutes be written in such a way that would require proper information to be provided at the proper time before any penalty could be levied.

These problems have led to the formation of the Agri-Food Association which I represent here today. The primary objective is to provide information in usable form to the workers, the crew leaders, the migrants, and many others so that they can comply and thereby improve the conditions of the migrant laborer.

I would like to add, in addition to what we have written here, that the Wage and Hour and the Fair Labor Standards Act is one of those things that is interpreted by many different areas of people in all States, every home State. In the State of North Carolina, we have three different interpretations at the present time.

I have just been informed that I must register as a farm labor contractor. I have not decided whether I wish to challenge that in court, or whether to go ahead with the paperwork, and lean over and comply with the bureaucracy.

In the area that I represent, I have here in front of me a notice of a citation to a grower in eastern North Carolina that has had three citations assessed against him in the last 60 days, and for each one of which the wage and hour people who are enforcing this statute came to the grower's premises back in late June or early July, and saw what labor he was using, looked at the cars, presumably, that the labor contractor had, and nothing was said whatsoever about any violation at that time. Upon two additional audits, nothing was said.

On January 26th of 1978, the grower was approached by another member of the same agency, and was told that he was being cited. I would like to point out to you what he has been cited for: Engaging in business unregistered under the Fair Labor Contractor Act.

What happened in this is that the man had a card to operate as a migrant labor contractor. The grower did not know that he had to have two other areas that had to be lettered on this contract card and all that, that he would furnish his transportation, and furnish housing. The housing that he moved into was approved by the North Carolina Department of Labor, but was not approved by the Wage and Hour Division of the U.S. Department of Labor.

The second and third citations are, basically, the same with an exception. The second citation says: "failure to complete contract of records." Under this particular citation, I went to the auditor in question, and asked him what the problem was. He said: "Well, the labor contractor sold his people some merchandise, cigarettes and such, and took it out of their wages at the end of the week. He was supposed to have also had a copy of this."

There is no other industry in the Nation that is required to do this. And under the Fair Labor Contractor's Act, I absolutely cannot interpret anything that resembles this out of that statute.

Our legal counsel has been over this thing, and he comes up with the same thing that I do, but these people are loosely interpreting in different areas the same section of the statute. This is done in eastern North Carolina. As to the other two divisions, there has not been a single citation issued.

I think that the best thing that could happen with any of it is that Congress spell out some guidelines that these people would have to follow, and not to start passing along interpretations from people that maybe do not have the finesse, who did not understand the congressional act in the beginning, or who really do not care.

But I would like to know, and I would like for the committee to make this part of their record. I would like to know how three different area directors in one State can come up with three different interpretations of the same statute.

I will give to you in letter form within the week a request of you to interpret the section of the statute that requires me, as an executive director of this association, to register as a farm labor contractor.

Mr. Goodling. Who told you that you had to register?

Mr. Robinson. One of the division directors of the U.S. Department of Labor.

Mr. Andrews. Well, Ben, I certainly would appreciate receiving copies of those three letters to which you refer.

Of course, I am sure that you understand, as well as I, that we do have an executive and a legislative branch which should work together. But the various subcommittees and the committees of the Congress cannot possibly follow through all of the interpretations and inspections. About all that we can do is write legislation.

What you would like to say is that all of the people who are abusing their fellow-man, or mistreating their fellow-man should be registered and inspected, and something should be done about it, and all the good guys should be left alone.

That is really what we are all trying to say, but as you well know, there is no way to draft a statute which says that. That is what I think everybody is trying to say.

Some crew men mistreat people and take advantage of people, many of whom are some of our most depressed people already. Many of them are ill-equipped to hire lawyers, accountants to plead their case, and they are subject to being victimized more than most of the population, especially if they are a long way from home and family. It was thought by the Congress, and I agree, and I think that probably you do, too, that some legislation, special legislation is needed to provide some safeguards for people who are being so treated.

Now obviously, there are companies, and individuals within the country who treat their fellow man very much to the contrary.

It is not intended by the legislation to unreasonably create a burden for those people, but the question is how to arrive at definitions of the statute to accomplish that. That is what we are trying to do. That is what we are trying to do, and we want to commence the job.

I know it is difficult for the committees. It is difficult for the Department. I am sure that no matter how apropos you may be in draftsmanship, it still has to be subject to interpretation, not only by the Secretary of Labor but by hundreds and probably thousands of people. It is inevitable that they are not going to understand it all exactly the same way, or apply it exactly the same way. That, basically, is an administrative problem, but we have to keep addressing the legislation so as to try to help accomodate the differences in the interpretations and the misunderstandings. Surely, we will try to do that.

The matter of the word "personally". That was put in because some people complained during, or prior to 1974, that they were personally engaged in supervising and paying these farm workers.

The word "personally" was put in there, as I understand it, to try to provide some reasonable relief for people who were not acting through a middleman, so to speak.

Maybe I am too naive, but I have a certain sympathy for every witness who testified here, including, certainly, you. But I know that corporations, and if you do not, you are being more naive than I, corporations come into existence for a variety of reasons, most of which are quite admirable. Nevertheless, I think we all know that the corporate shell is frequently a device whereby we can keep our personal assets to whatever extent we want, and put a real limited amount in the corporation. If it gets into any kind of violation trouble, or if it gets fined, we just let it go bankrupt, and it cannot pay what we consider to be the proper obligations, where as the true owners behind the corporation are not assessed.

So I think that the Department has some reasonable skepticism of the corporation as being a person. I can see a side to that. I think there is a reasonable suspicion. On the other hand, I certainly grant you that that suspicion probably should not become a ground for personalization of people who are incorporated for altogether different reasons; that sometimes the corporation is much more responsible than the individual. I expect generally that it is, and in those instances, there would seem to be no reason that the corporation should not have the same advantages and exemptions as would an individual proprietorship or corporation.

What, essentially, do you think needs to be done to this act in order to permit it to be able to accomplish the basic purposes which I am sure you understand, and yet, not to be unreasonable in terms of the inclusion of people. What would you suggest?

Mr. Robinson. First of all, let me say that I know, and believe in the majority of the act. To start with, it was needed. I have been involved in enforcement on the part of this act, and I believe it was necessary, but I think the far-reaching interpretations that some of us have used have caused more problems.

Most of our people, as you pointed out a moment ago, are not too close to the attorney. A good number of them do not have the funds to hire legal counsel, and that is one reason that our association was organized. But first, I think the thing that would help all of us is some central effort on behalf of Congress to put as much of this under one umbrella, or one agency of regulation, as is possible.

Mr. ANDREWS. May I respond to that?

Mr. ROBINSON. Yes.

Mr. ANDREWS. I would like to work with staff, and others, perhaps even yourself, in seeing if that can be done, but I do not foresee that that can be done.

Mr. ROBINSON. Let me point out that we have proposed legislation to be drawn that will be presented to you in short order that would allow contractual efforts on behalf of States that are now enforcing part of these acts, that are doing a good job with them, that could contract to do this work, and do it in just as practical a manner, and probably in a more practical manner than is being done now and just as effectively.

Mr. ANDREWS. Now specifically, what do you propose that such a State agency would do?

Mr. ROBINSON. Well, take, for instance, a Department of Labor such as the North Carolina Department of Labor. We contract with the Occupational Safety and Health Act as, I believe, some 40-odd States have done, and effectively have put across a good program.

These people could implement the Fair Labor Standards Act. They could contract to do the wage and hour work. And I know that the immediate question for a lot of people is: Where is this going to put a lot of people that are now involved in this work?

They could easily transfer right in to the State agencies. Local administrators seem to have a closer understanding, and are better able to communicate. This, I think, would be a great step forward. In some isolated instances, this would not work. We have to be able to ferret that out.

Mr. ANDREWS. We may be wasting other people's time, but let me say that you are speaking of the North Carolina Secretary of State and the Labor Commissioner, John Brooks. John Brooks came up here some time ago. We have had, for many years, two mine safety acts. One of them has to do with the coal industry, and the other one has to do with all noncoal mines, that being rock quarries and talc mines, and others.

Now, for many years, those acts had different provisions with respect to inspection. The Federal Mine Safety Act has always provided for Federal inspection only.

The non-Federal Mine Inspection Act has always permitted States to do the inspecting if the State could convince the U.S. Secretary of Labor that the State had high standards, and observed them in a strict way.

Eventually, there were only two States, I believe, that were permitted to do so. I know that North Carolina was one of the few that were permitted to do all of the inspections within our State.

Now, the committee, of which this is the subcommittee, got the legislation to combine the two acts, on the theory that the situation was confusing. I went with Mr. Brooks to the chairman of the subcommittee, Mr. Gates, who was considering that legislation.

We explained just what you have said, as appealingly as we knew how. He agreed he would try to help us. What we were saying was to combine the two acts, but to please leave in the exception in which you permit the States to do the job.

We got that on the floor, and I think we got somewhere in the neighborhood of 20 votes. There were about 410 the other way. We might, for this, get even 30 votes.

I think that we have to deal with the practicalities. There is a tremendous movement in the country for uniformity. People do not want to go from State to State with different standards, different court systems. They want uniformity.

Not just the people who are interested in this act, but people who are interested in labor legislation, health legislation, youth legislation and legislation for the elderly.

They want Federal programs, Federal enforcement. There are a few exceptions, but they become less every year, and to move that tide back the other way, I think, would be impossible.

You are suggesting that we turn it around the other way, and take what is now Federal, and make it State. However philosophically you or I, or anybody else, may think that to be good, I believe that we would be wasting our time in an effort to do so. I do not believe that that is one of the answers.

Mr. ROBINSON. Mr. Chairman, I have seen trends reverse themselves in my life span, and so have you.

Mr. ANDREWS. I certainly have.

Mr. ROBINSON. One of the answers to the objection to this thing is to simply write into the act that any appealing facilities involved will be in a Federal court system. This eliminates the local problem of identification.

We have no objection in going to the Federal State court system versus the State court systems. As far as I am concerned, they are both judicial. They are supposed to serve the same purpose, but if this is the objection to it, this could be written into the act, and I think it would be acceptable to most of us who are law abiding.

The other section that I would like to ask to be considered is that if and when this is considered, that the people that are involved be notified in plenty of time so that we can prepare ourselves and make the presentation that is in keeping with the industry that we represent.

If we continually have to get short notices and put our facts together real hurriedly, this, I would——

Mr. ANDREWS. To do what now, specifically. I lost you somewhere.

Mr. ROBINSON. To bring about a system whereby the people involved, such as the group here and myself, representing the agricultural people will be notified in plenty of time so that we can put our facts together, and present them to you in a more orderly manner.

We are receiving very short notices, both in the State and Federal instances, to hearings that we have an opportunity of appearing in on behalf of our people.

Somewhere along the line, we are doing something wrong, or our organizations are not being recognized for what they are doing. I would certainly like to see that that be considered.

And last of all, I would like to ask you to please consider the changing of the section for the Migrant Labor Contract Act where it stipulates today that a man who travels 25 miles from home or better is a migrant.

I would like for that to be amended, to extend that to 75 miles so that these people that are out of a job now as local haul people could get back into the migrant stream.

In my State of North Carolina, we are talking about putting back into the migrant labor stream, as it is called now, a local haul or day-farm labor, approximately 10,000 people.

This is an economic impact that affects the northern part of North Carolina more than any other section. When the amendment was made, we put these 10,000 people out of a job because they could not afford the insurance involved. They could not afford the regulations, the stipulations, the paperwork that they had to have as a migrant labor contractor.

Most of them were growers that had small farms—some of them in your area, in your district—that were subsidizing their family income by traveling 25, 50 and, in some cases, 60 or 70 miles, and doing work for people, and coming back that night, many of them hauling their laborers and their friends and passengers, as many as 6 to 8, maybe 10 sometimes, in a small van. These people have their own social services today as a result.

We would like to request that that be seriously considered.

Mr. ANDREWS. Well, I am sure that it will be seriously considered. I do not know what the chances are that it will be accomplished, but surely, it will be most seriously considered.

The trouble with any figure that you may pick is that it is arbitrary. It is hard to show the competing groups why 25 is any more magical than 50 or 38—just to grab any figures. It is hard to make a very persuasive argument that one figure is necessarily better than the other.

But surely, this will be most seriously considered. Is there anything else that any of you gentlemen would care to add to what has been said?

Mr. GOODLING. I have two questions that I would like to ask.

Charlie, you said at one point that you could not file your employees because you do not have the contract number for yourself.

Mr. ROBINSON. I stand corrected.

Mr. GOODLING. You can do both at the same time.

Mr. KINGSTON. I was just told by the Department's representative, not the man who came to see me. I was told I had to put on the employee application form my registration number before I sent it.

Mr. GOODLING. My second question: Having filed in September, did you think when you were filing that they changed it then to September, I believe.

Mr. KINGSTON. In September.

Mr. GOODLING. Did you believe then, or were you under the impression that that was going to cover you for 1977 and 1978?

Mr. KINGSTON. No. 1977. We understood that we would have to reapply.

Mr. GOODLING. One question.

Mr. Robinson, 10,000 jobs. I do not quite understand. Who were those 10,000 people?

Mr. Robinson. The majority of these people were small growers who had small tracts of land.

Mr. Kingston. They did not make a sufficient living for their people, and the standards that they had for those people on the land for tending their crops were for 2 days, 3 days a week, and then they were contracting to look after the harvesting of other people's crops 25 to 50 miles from home. This was subsidizing. They were doing a good job of it.

Many of them were Indians in the central area of North Carolina. Many of them were young blacks that had bought homes, and found that their income was insufficient to take care of their needs and pay for the homes they had.

A lot of them, a lot of these people have just been completely put out of the millstream.

Mr. Goodling. They owned a tract of land, but that was not sufficient enough to carry all of their expenses, so they were also taking advantage of working on other land. They were using their own land, and working on somebody else's farm.

Mr. Robinson. Yes, sir.

Mr. Goodling. I have no further questions.

Mr. Andrews. Ben, I will just throw this out for what it is worth. I have not come to any conclusion. I tend to argue about sides just to develop some thought. I have not come to any conclusion as to any of these proposed amendments or statistics, but I did begin to think down at Raleigh at a hearing that it might be reasonable to drop the mileage altogether.

What I would like to see, instead, I think, is that if you haul a person for employment any distance, that person should be hauled in a vehicle that is reasonably safe. Certainly, in my opinion, there should be some insurance in case the vehicle is wrecked whereby the passengers are afforded reasonable protection.

I think that one of the troubles is that protection that is required under this act is just not commensurate, certainly, in eastern North Carolina, or in piedmont North Carolina.

You put this contractor, whatever you might call him, at a tremendous disadvantage in that if he has to comply with the act, he has to have much more expensive insurance than the person who is hauling the same kind of people to work at the chair factory.

I think that we could say in this act, in the case, of eastern North Carolina, that if the vehicle has a state inspection sticker, you do not have to carry extra insurance, whether hauling one mile, or 75 miles. Of course, you have to have insurance anyway. In North Carolina, you cannot get licensed unless you have insurance.

Mr. Robinson. Sir, there is a great difference. There is a difference of approximately $60 versus $1,700.

Mr. Andrews. That is what I am trying to get at, to eliminate. If we could put in the act something to the effect that if the driver-owner of the vehicle, the person who is doing the hauling for the farmer, complies and has the vehicle inspected according to the North Carolina law, if he has such insurance as is required in North Carolina for a vehicle transporting workers, whether it is a fertilizer company, or a chair company, or any other company, then he would be deemed to be in compliance with the requirements of this act in that respect.

Does that seem to be reasonable?

Mr. Robinson. You have got a problem that you create right there in your own State for the Peach Holders Association, the side of your district.

We are involved in North Carolina and South Carolina. One of our growers was cited. He crossed the State line, picked up people, and brought them back 10 miles. You see the inequity in it is saying just North Carolina.

If we put a mileage span on it, then we would eliminate——

Mr. Andrews. If he transported that worker in more than one State, then he would have to comply with the requirements of each such State in which he operates the vehicle.

Mr. Robinson. That would be fine.

Mr. Andrews. Something like that. It just seems, offhand, that it would make some kind of commonsense, and it would eliminate risking these people for 25 or 75 miles with no protection for them at all.

That is what these other people, I think, object to, and I think with some basis. Why would any of us want to be in an uninspected vehicle for 1 mile, even 1 mile, or on a vehicle that does not have a reasonable amount of insurance? Why make the farmworker ride in a vehicle that has much more insurance than that? The Governor's car does not have that much insurance when he is driving around. My car certainly does not have this much insurance. The owner of the farm's car, I dare say, does not have that much insurance.

I do not know why we would want there to be so much more insurance on that vehicle, the vehicle that the farmworker rides in, than for the rest of the population, and other employees in other industries. On the other hand, I agree with those people who cannot see any magic to the 25 or 75 miles.

I think that there ought to be insurance for the vehicle anyway, regardless of how many miles. That is the way in which I am prone to be thinking.

Mr. Robinson. Under the act, the contractor today has to have the same insurance as a Greyhound busline.

Mr. Andrews. That is my understanding, and it seems to me, that that is rather ridiculous. I think that is the one main objection behind the proposal that the 25 miles ought to be more.

Mr. Robinson. You take the 25 miles, or the other suggestion, either one would eliminate an awful lot of problems; and yes, I just feel that eliminating—let's eliminate the miles, whether you are the farmer, personally, a corporation, or a crew leader, or whatever you are—can't we get away from some of these things that we are acting on? Anybody who is going to work on the farm would have to have some reasonable inspection. He would have to have a vehicle that has been inspected by any State in which it operates for that purpose.

Mr. Goodling. Twenty-five miles did not help the two young folks who were testifying this morning.

Mr. Andrews. Seventy-five miles is something foolish to argue about. For any distance, you ought to have a safe vehicle. And you ought to have a reasonable amount of insurance for the passengers, whether you are going 25 miles, or whatever, just around the farm.

Mr. ROBINSON. We agree with the safety factor. There has never been any question as to whether they should be protected as to their safety, but this thing goes a little bit further than being safety oriented.

Mr. ANDREWS. I think that that is the problem we have, not the miles.

Mr. ROBINSON. Right. Now, as the statute stands, there are probably 50 percent of the people that apply for insurance and cannot find it. Companies just will not write it.

Mr. ANDREWS. You mean for the crew?

Mr. ROBINSON. They just will not write it. Last year we had three different companies. We wound up we had one in Florida writing.

Mr. ANDREWS. I think that has to do with the very complicated problem of excluding workmen's compensation benefits. We will continue to work on that.

Mr. ROBINSON. Thank you very much.

[The prepared statement of Ben Robinson follows:]

PREPARED STATEMENT OF BEN ROBINSON, EXECUTIVE DIRECTOR, AGRI-FOOD ASSOCIATION, ROCKY MOUNT, N.C.

We are happy to have this opportunity to make this presentation to this committee. We are also very pleased that you are taking this time to look into this problem which effects many growers and labor contractors up and down the East Coast, but in the long run could affect what all of us eat on a daily basis.

Contrary to popular belief, North Carolina agriculture has diversified immensly in recent years, and while tobaco is still an important part of the agricultural program, there are many other crops grown that require many hands to harvest. These include cabbage, cucumbers, peppers, strawberries, beans, apples, and most important Yams. North Carolina has become the number one Yam growing state on the East Coast.

To harvest these crops, the growers have been using up to 20,000 migrant workers. Up until 1974 over half of this group was from within the State and the other half from the southern migrant stream. This has changed since the passage of Pub. L. 93–518 known as the Farm Labor Contractor Registration Act of 1974 and its amendments in Pub. L. 94–259 enacted in April of 1976. While we realize that there were many abuses by crew leaders and some regulation was required, this law has driven all of the instate labor contractors out of business and the growers must now depend totally on workers from other states. The insurance requirements in Section 5 of this Act have become so difficult to comply with that the small instate contractor has gone out of business. This has had an adverse effect on the North Carolina economy since many of these workers used this summer work as an income supplement and now have to rely on public assistance programs for support. It can also have other adverse effects as was the case this year when North Carolina lost 10 percent of its Yam crop because there just wasn't enough labor to harvest the crop. Besides wasting food, this loss affects many people at a time when economic recovery is a major national goal.

Based on the above, we would recommend to this committee and to the Congress that Pub. L. 93–518 be amended and exempt instate crew leaders for a distance of 75 miles from their permanent place of residence. This change would provide part time employment opportunities to many residents of our State and decrease our dependency on the migrant stream. Many growers prefer this arrangement as in some cases, the crews can travel back and forth to their homes and thereby decrease the need to provide migrant housing and its accompaning problems.

The other problem we would like to bring to your attention is the proliferation of agencies and regulations that seem to make it more difficult rather than easier to obtain migrant workers. In some instances, a grower may have to deal with up to ten different agencies during the course of a planting and harvesting season. Many of the regulations of these agencies were vague, or to say the least, not all that easy to understand, and many times agencies attempt to enforce each others regulations.

Let me illustrate my point. When a grower puts in his order for migrant workers with the Employment Security Commission, he must get the housing pre inspected using OSHA Regulations, which in North Carolina is the responsibility of the State Labor Department. However, if a well or kitchen facilities are involved, he must get those inspected by the Health Department Sanitation Branch. The grower must then make sure that there isn't a local ordinance that puts additional requirements on him. You must realize that all of this takes place before any workers arrive.

After the workers arrive, there are other factors such as inspectors from Wage and Hour, Fair Labor Standards, Health Department, OSHA, and local people arriving on the scene. This maze of inspectors has caused apprehension and mistrust on the part of many growers and in many cases makes them just give up in their attempts to improve the living and working conditions of the workers, which was why they passed in the first place.

We would like to recommend that all laws, regulations, and agencies be combined under one umbrella, so that each grower could go to one building and see one person in regards to his farm labor needs and problems. This would do more to foster cooperation and improve living and working conditions than any other thing we could recommend. This recommendation comes from many years of working with all segments of the agricultural community.

Another problem we wish to bring to your attention is the complete reliance on monetary penalties of the regulatory agencies. If an information and voluntary compliance program could be established, so everyone would know what is expected of them, every effort would be made to comply. Monetary penalties could then be used in extreme cases with a much more profound impact.

We recommend that statutes be written in such a way that would require proper information be provided at the proper time before any penalty could be levied.

These problems have led to the formation of our Agri-Food Association which has its primary objective to provide information in usable form to growers, crew leaders, and migrants, so they can comply and thereby improve conditions for all involved.

If you have any questions, we will be glad to respond.

Mr. GOODLING. Next on our panel we have Mr. Jones of Dade City, Fla., Mr. Dixon of Bartow, Fla., and Mr. Walpole of Columbia, S.C.

Have you gentlemen decided among among you who is going to be first? Just according to the list, first on the list that I have is Mr. Talbert J. Jones, Jr.

Mr. Jones, as a crew leader, are you not afraid to show up here today?

STATEMENT OF TALBERT J. JONES, JR., DADE CITY, FLA.

Mr. JONES. I am afraid to show up. I am the scapegoat.

Mr. GOODLING. Would you like to begin?

Mr. JONES. I would like to read my written statement.

Mr. GOODLING. You may proceed in any way you want. You may either read portions of your statement, summarize it, or whatever you would like.

Mr. JONES. Mr. Chairman, honorable members of the committee: From 1973 until now, I have been and still am a farm labor contractor and crew leader.

In Florida, I am a crew leader, and when I move upstream from Florida, I am a labor contractor which requires me to come in compliance with the Farm Labor Contractors Act of 1963.

From 1973 until now, there have been several changes in the regulations, mainly the insurance, the improvement of the housing code, which has been enforced to the utmost in the State of South Carolina. The farmers and the community as a whole care about the harvesting of the crop. My experience does not tell me the same in the State of North Carolina.

It seems to me that there is a lot of talk about the migrant worker and his welfare and, for the most part, the brutality from the crew leader directed to the migrant worker, which is true, but there are still two sides to every story, and in my testimony, I would like to look at both sides.

The migrant worker does not have to answer to anyone, but the crew leader has to answer to everyone. He has to answer to the migrant worker, the farmer, the Federal Government and the public.

Some of the migrant workers, not all, take advantage of the crew leader by promising him: "If you will take me off the street, and give me a job and a place to stay along with my pay, I will swear to you that I will work the season with you." But this does not hold true in 50 percent of the cases.

First, of all, the crew leader tells him where he is going, and if you are going where he wants to go, he will catch you for the ride. He will ride your bus to that destination.

While riding from one State to the other, the crew leader will feed him, buy cigarettes and his drinks, and once he gets to his destination and it is time to work, he will go to the field, and leave through the back way.

Now, the crew leader has promised the farmer that he will have the amount of people he needs to harvest the crop. Now, the total working force has been cut short until this crew leader can get back on the road, and find more migrant workers to bring the workforce back up at his expense.

This type of thing brings on intelligence, as far as the crew leader is concerned. He feels that he has to protect his interest. He has no protection from the federal government in any way, and the migrant worker has it all.

The migrant worker is well aware of his rights. He knows there are several Federal programs at his disposal.

The Federal Government requires the crew leader to pay the migrant worker, but there is no law that requires the migrant worker to pay his indebtedness to the crew leader.

For example, temporarily out of work for 3 weeks, the crew leader takes the responsibility of boarding and lodging the entire crew because it takes almost this time for the Federal Government-funded program to respond to his needs. There is no law, that I am aware of, that requires the migrant worker to repay once the migrant laborer is back at work. Again, this creates a mental and financial strain on the crew leader. This causes brutality because the migrant laborer will move with another crew to avoid paying his bill.

The crew leader sees him, and asks him to pay, or if he has the money. He then says: "There is no law that I have to pay you." But there is a law for a crew leader to pay him. Brutality then sets in again in many cases.

As far as crew leaders are concerned, there are many that are ignorant to the laws simply because they are illiterate. There are many who learned from the old school.

A few years ago, the migrant force was made up, basically, with black people and families. The white man was the crew leader and the contractor. He would transport them from one State to another with no heat on trucks because there were no buses. There were no housing codes for the migrant worker. He lived in shacks, and the rain came inside, and it leaked outside. He was beaten for not being able to go to work, sick or not. His money was a bag of flour and a sack of potatoes and $5 if he were a good worker or lucky.

Gradually, the black man started taking over as crew leader, and followed the trend, which is wrong, and has been wrong for a long time. This is where illiteracy comes in again.

The Farm Labor Contractor Registration Act of 1963 and 1974 did it all, and said it all as far as I am concerned.

We do not need any more laws until these laws are enforced. If these laws were enforced, we would not have any shanghaing, brutality, and misusing the migrant worker in any form.

Crew leaders have been denied registration because of these forms and white slavery, but the secretaries still issue someone in his operation a registration which still gives him control over the crew and operation.

I say to you, Mr. Chairperson, and the committee, that we are fighting a losing battle until we straighten out what we know has been wrong, and still is wrong.

Suggestion: First, start where the trouble begins with the migrant worker and the crew leader. We cannot start with Congress, Senators, and Representatives. We must build a committee within the migrant stream who knows what they are looking for, and where to find it.

I feel we have people in the migrant stream capable of making a report. So they need to know who to report to. I also feel that someone needs to respect this report, and to take immediate action on it.

We have formed a similar committee from ECMHP to try and deal with the crew leader. We also need an in-service training for crew leaders, to meet twice per year, to make them aware of the laws and their responsibilities to the migrant worker.

I am the first to admit that there are too few good crew leaders, which our country needs terribly, because there will always be migrant workers.

I can never praise the ECMHP—East Coast migrant health project—enough for the good things that have been brought to the migrant worker from this organization.

Their primary goal is not to discourage migrant laborers, but to make sure that they are in good health, have good housing facilities, being treated as a human being, have something to contribute to society, and to take pride in themselves, and to be good at what they are doing, to respect their fellow man, and have his fellow man respect him.

In conclusion, when we start from the bottom, get someone from the mainstream who has been there and is still there, stop getting one-sided stories, and start having the news media to speak on the migrant population as a whole, then I feel that we will do something constructive.

In addition, you have elicited testimony that is literally against the crew leader, right on down, and I am here alone. I am well aware of the fact that I am alone, too, in this respect, but there are a whole lot of problems that the crew leaders are confronted with that the public does not know about because the news media takes off and runs away with the bad crew leader, and never prints anything that is good about the crew leader.

I do not think that anybody, any of you, has gotten any information that is a good report on what the crew leader has done, none whatsoever. I have never read one, in any case.

I just do not know. I mean, I am in the position, and I focus on me, as far as being a crew leader is concerned, but there are many good crew leaders, but the way the structure is today, you put everyone of them in a bag, and you shake them up, and the first one that comes out, that is him, which is not, basically true.

Now, I am aware of the migrant laborers' needs. I try in every way to comply. I do not think anyone can completely comply with everything that deals with this, or whoever the person is that is put on them because just about the time that you think you are in compliance with one thing, then something else is in the phase. I do not know what it is from one year to another one, really. We are just running around in a circle.

And another point that I would like to bring out is that when I spoke of illiteracy, you have crew leaders that are big crew leaders. When I say "big crew leaders," I mean crew leaders that have sometimes 200 people at their disposal, as far as working folks are concerned, that do not even know the name. It was as large as that; like they would not know the name, but they have the ability to go out and make money.

And I know that plenty of you people come in contact with people who do not know how to read, but know how to make a dollar, and this has been the case. And they do not know.

Well, like I say, they learned from the old school. They follow the trend. They feel this is right, and it has never changed, but if we could get some kind of in-service training for the crew leader and make him aware of his responsibility to the migrant worker, then I believe we can get something constructive going.

I believe that if you would put the crew leaders out of the reach from the Department of Labor, then you could eliminate a whole lot of brutality or cruelty, or whatever the case might be, because he knows what he is looking for. He knows the little turnaround that a crew leader can do to a migrant worker, and there are many that do, but then you have quite a few that do not take advantage of them.

Now, the crew leader has the responsibility, at his expense, of transporting people from Florida all the way up as far as New York.

There are plenty of times when you cannot even get the sheriff's department to come out on the camp because they have heard from sources—they have not gone out themselves to find out what the situation is—they have heard that if you go out there, you are going to get something blown away from you. So it is better that you do not even go out there.

So the crew leader has to be the sheriff, the judge, the lawyer, and in most cases, the doctor, the mother, and the father, and no one, I do not ever hear anybody saying anything good about the crew leader, and it is pathetic.

And you can look all around you and see people that are prospering, that have a job, basically, because of crew leaders, because if there were no crew leaders, there would not be any use in having all of these Federal-funded programs for migrant workers, and then yet, they sit and want to kill the crew leader. I just fail to understand the point.

I am open for questions.

Mr. ANDREWS. Mr. Jones, first of all, I suggest that you not consider yourself to be alone then, that the news media finds out all about the bad politicians and not the good politicians. We are in the same boat, and I mean that seriously.

I want to thank you for one of the best statements that I think the committee has had during the 2 days of the hearings. I do not know how a crew leader can possibly exist any more. I know it must take an awful lot to, as you say, be the sheriff, the judge, and the doctor and the lawyer and the marriage counsellor, and to do all of the myriad of things that we find in the span of a year without much financial assistance.

I do not believe that you will get any help from the FHA or HEW, or any of the other helps that most business people rely upon, such as SBA loans. I just do not believe you are getting much help from your government. You probably have about as hard a job as anyone.

It is not our intention, really, to try to pick on the crew leader. I think that some of the suggestions which you made are good ones. Perhaps there should be some assistance, along with the investigation, in the way of schools, and certainly, we will look most seriously to those suggestions. Perhaps we will come back to this later, if you do not mind. Let's hear then from the others.

Mr. GOODLING. Just one question. I get the feeling that in this day and age, perhaps a lot of the crew leaders were former migrant workers. Am I right or wrong in that? I say it simply because I believe it was Ms. Hill, this morning, who was talking about the crew leaders not very kindly, and indicated that she knows some of these things because her girl friend is now a crew leader, and she knows what she does. Am I correct? Are there quite a few people who were migrant workers who are now crew leaders?

Mr. JONES. Right. I would say 95 percent of them.

Mr. GOODLING. Ninety-five percent.

Mr. JONES. I would say that 95 percent of them were migrant workers at one time.

Mr. GOODLING. They should have appreciation and understanding.

Mr. JONES. They know what is going on in the system. Get someone from there, and put them in with the crew leaders, and let him be in that reach, and when you come up with the facts, give the man a chance to comply.

Like I say, plenty of these people do not know. They do not even know what they are talking about. Here is someone: when they should be here, they are here, and say, "Lets's go get him, and put him in jail."

What in the world have you accomplished? You have not accomplished anything. He is going to get out and start practicing the same thing that he practiced before he got in jail. Give him a legitimate period of time, legitimate time, to get himself in compliance, and say: "Charlie, what are you doing? That is not right. Let's give you 6 weeks to get this thing straightened out."

I think 6 weeks to straighten out a problem is adequate time. If you do not have it straightened out in 6 weeks, the legitimate period of time of 6 weeks, other than arguing over why he did not get his compliance out, well, then just write him off as a crew leader because he does not mean to come into compliance. He just does not want to do it. So just write him off, but you cannot start at the top and work to the bottom. You have to start where it is, and believe it or not, there are some crew leaders that are willing to get out and to tell that crew leader: "You are wrong, and you are going to have to do it this way because it is serious."

It is a very serious problem. A crew leader is a political issue. We get more attention than the President, I feel.

[Laughter.]

Mr. JONES. We get a lot of attention, but we never get a chance to say anything. The only difference is that the President gets a chance to say something back. We do not, and I am thankful for this opportunity.

Mr. ANDREWS. Mr. Jones, incidentally, do you know of any crew leaders who make less than $1,700 a day?

Mr. JONES. Well, what may have happened, Mr. Chairperson, is that she may have seen $1,700, but that was the payroll. That was for maybe about 50 heads of people. That is, the grower may have said, "Well, here is $1,700 for the day's work." She saw $1,700, apparently, in cash money, and she did not see how it was distributed. She did not stand around to see how it was going to be distributed, and maybe that crew leader might have wound up with $200 for the day. So a whole lot is being said that I just do not understand. A whole lot of things people are saying, and not even putting any backup behind them as far as sense is concerned.

VOICE. Good.

Mr. ANDREWS. All right. Thank you.

The next gentleman. What is your name, please?

STATEMENT OF ELMER DIXON, HEW ADVISORY COUNCIL ON MIGRANTS, BARTOW, FLA.

Mr. DIXON. My name is Elmer Dixon. I am from Bartow, Fla.

First of all, I would like to say that I am really appreciative of this chance and opportunity to come here. I am sorry that you do not have the documented statement of mine. I sent one in, but I do not think that you have it. I think I sent it to the wrong place.

Mr. ANDREWS. Do you have a copy with you?

Mr. DIXON. I wrote one in longhand, but I need it.

Mr. ANDREWS. If you will let either of these three people before you leave know, you can submit a statement for the record at any time within 30 days after your testimony. So if you get that in at the correct address this time and get it to us within the 30 days, it would surely go into the record.

Mr. Dixon. I surely will.

First of all, I have got the notice inviting me to come up. It was such short notice that I tried to come out with something. I have been, and I am very, very concerned with the migrant workers case. I have been a crew leader. I have been a migrant. I retired from the military services. I became a migrant by choice.

I want to say that I am in agreement, primarily, with the bill as written. However, there are some parts of it that I think need to be corrected.

No. 1: What I would like to see corrected is that the investigation part of the bill itself state that the investigation will be carried on, but the investigation is not conclusive enough.

In the State of Florida, if you have committed a felony, you cannot get a whiskey license, but you can get a crew leader's license. We are dealing with human beings here.

I heard the name mentioned this morning of Wardell Williams, and this is coming up in my testimony, on being able to obtain a license.

He was a man who was convicted of a murder, and he was sentenced to 20 years to be spent 1 month at a time because he was too valuable to the agricultural stream to be kept in jail, and he was used with this. I, personally, know the man, and I know the things that he has done.

Also, there is the case of the Ivory brothers in Lakes Wales, Fla., who were indicted for slavery, and sentenced, but they are on appeal now.

Now, if these men are not given a license, all they have to do is have their brother or friend to go get their license, and they continue to operate. So the investigating part of it is not conclusive enough. There needs to be an investigation the same as anything else.

Before you can run for office, they are going to investigate you pretty good. So I think that the few number of people who are dealing with human lives should be investigated also, especially if it is on the book.

Now we get down to the implementation of the law as it was written. We have investigation organizations out there that are supposed to implement this law. As I say, I have been dealing with migrants since 1969, in one way or another, but I have never seen, and I have never heard anyone say that they have seen an investigation before something happens. Until something happens, there is no investigation.

Back again to the case of the Ivory Wilson brothers. After it was reported to the local sheriff's department in "Pokane", Fla., about this, then the investigator showed up, but before, you never see them. They stay in their office. You just cannot enforce the law if you are going to stay in your office, and wait for it to come to you.

What we need is someone, as Mr. Jones stated, and Mr. Jones and I, we have been talking, and my views are well known not only with Mr. Jones, but with quite a few organizations, someone who knows what they are looking for, and who is not afraid to go out into the field, or grieve over something.

These are the people that we need to act as investigators, enforcers, not someone that is afraid to go out.

Also, on the unlicensed crew leaders, there are so many unlicensed crew leaders, and there are so many infractions, brutality and infractions of the law happening.

In the citrus, especially during the cold season, it is very easy to get your crew and go out and work if you have got a truck, or if you have got a van.

I have a van, and I have been out with so many jobs. I have been a crew leader. I have never been a licensed crew leader. I did not need a license. All I needed to know was how to operate that, and have some people, and have the transportation to take them to the groves.

So the unlicensed crew leader is going unnoticed. Once they are licensed, they know that they must come in compliance, and they are going to do some things, and there are some things that they are not going to do, but the unlicensed crew leaders, they do not have anyone to answer for that.

All he had to do is to go to the main contractor, and have them on call at the labor office, and say, "Well, I am going to send him down to get a license," and he would get his license. These are the things that we need to check into.

And to get into this by radius, I know that we do not want to get into any more than a 25- to 50-mile radius. We are going to open the door for the Ivory Wilson brothers to come back in as crew leaders because they do not have to travel this far. We are going to open the door, and let them back in.

Mr. ANDREWS. If we increase the radius from 25 miles to, say, 75 miles, so to speak, that would be inviting some unscrupulous crew leaders to get back into that business that are now out of it.

Mr. DIXON. Right, sir, because very seldom, in the citrus season, do you have to travel 75 miles to get to your employment.

Mr. ANDREWS. All right. Well, we will come back to you later.

And now, the third gentleman, please.

STATEMENT OF JOHN B. WALPOLE, CHAIRMAN, SOUTH CAROLINA MIGRANT COMMISSION

Mr. WALPOLE. I am from the lower part of the country, Charleston, but I am representing the South Carolina Migrant Commission that is headquartered in Columbia, Mr. Chairman and Mr. Goodling.

Mr. GOODLING. Yes.

Mr. WALPOLE. I appreciate the opportunity of being here very much. I have reserved the right to write what I want to say until last night after I had the chance to listen. I would just like to make this page-long statement because there is one error in it. The Congressman's office typed it for me this morning, and there is one typographical error

I would like to say that we appreciate this opportunity to present the views of the South Carolina Migrant Commission on the problems of the definitions and the interpretations that have arisen since the passage of the extensive amendments to the Farm Labor Contractor Registration Act in 1974.

Mr. Chairman, I am on the South Carolina Migrant Commission as a producer farmer of vegetables in South Carolina. This commission was created by legislation of the South Carolina General Assembly with commission members appointed by the Governor.

Our first order of business was to define the term "migrant worker". I wish that Congress had done the same thing. I would like to go on record in support of bill H.R. 8233 as expressing the commission's position. I believe that it was the intent of Congress to protect and assist Mr. Jones, the agricultural worker who is employed by a crew leader, and does not return to his permanent residence each day.

In addition, I would like to go on record as supporting the position taken yesterday by the American Farm Bureau, which is abbreviated in the statement.

The Assistant Secretary of Labor, Donald Elisburg, has indicated in his report yesterday a definite need for a good working relationship between the American Food Producers and the Federal Government. However, there seems to be a definite conflict of opinions as expressed by Mr. Elisburg's report and the bills presented by the Congressmen to your subcommittee.

I understand the procedures by which this committee must function in helping determine what is best for our country. However, I wish to bring to the attention of this committee and all of Congress the following fact:

While Congress deliberates, and is being paid regardless of production, you are creating undue hardship on the food producing industry that gets paid only after they produce, and sometimes then we cannot market.

While we are waiting, please let me inform you of another alarming fact: Food imports from Mexico are increasing at an alarming rate. This food is produced where there is no minimum wage standard and no EPA requirements.

Attached, you will find a report of these conditions from the south Florida. This is the correction that I would like to be made: "South Carolina" is a typographical error. South Florida Tomato and Vegetable Growers, Inc. I request that this be entered into the record also.

I deplore any personal abuse of any segment of our society. This is today called "Human Rights". However, I believe this also should apply to any regulatory agency that usurps authority over the intent of congressional legislation.

In conclusion, Mr. Chairman, please let me urge you to declare to your colleagues in Congress the urgent need of a better public image of our agricultural workers so vital to the food producing industry of our Nation. I count it an honor to be associated as coproducer of food for the greatest country in the world.

And Mr. Jones, you are not alone. Mr. Jones, I appreciate your part, and if there is anything that I can do as an individual to help you, to assist you, and in getting across to the American people that we need you, that is why I came up here today and yesterday.

Mr. JONES. Thank you. I appreciate what you said very much. Thank you.

Mr. WALPOLE. Thank you.

Mr. ANDREWS. Very good.

Mr. JONES. Mr. Chairman, I have one more little factor to bring out on that.

Mr. ANDREWS. Good.

Mr. JONES. There, again, we are all human beings, and we can make mistakes. All of us can make mistakes. We are not perfect.

Well, as far as I am concerned—of course, I am looking at it from a lot of points of views. I do not know how anyone else is looking at it—we have far too many Federal funded programs just sitting out there doing nothing. Take like the Florida rural legal aid.

In my personal opinion, they sit down there in Florida until there is just about time to get refunding. They know about this bad gal all year, this bad apple we are talking about because I am in that same barrel, too. I got spoiled, too. I guess they do not do anything about it until the time comes to be refunded. Then here they run up to North Carolina kicking up a bunch of dust to no avail.

Then they resubmit. I think one was indicted on several charges, and his attorney just has made a fool out of him because he was not prepared. They did not have any facts. They just sit out there, and do nothing until it is time for refunding. I feel like we need food stamps. We need legal aid. We need all of these things, but do we have to have so many?

You know, they are getting down on the crew leaders' backs day in and day out, and the Federal funds, more or less, are doing nothing. I mean, we all have faults. All of us have faults, and so why get down to speak to the crew leader? The man needs to live.

I mean, take a crew leader with 25 or 50 heads of people for 3 weeks, waiting for the food stamp office to respond to their needs.

Are you saying that I am not entitled to get my money back that I am putting in? This is what you are saying. Are you saying that we need to be social workers, running up and down the road with $12,000 vehicles and trucks that you need to harvest potatoes?

I know that you might be familiar with that. I work in North Carolina. Every year I go back to the same grower in a $12,000 or $14,000 vehicle that you cannot use but maybe 6 months of the year, but you make payments for 12 months of the year.

Here, the fellow does not have food stamps available. "Well, I just decided that I do not want to work here any more." That is Charlie Brown. You just forget about it, but my payment is coming up on my truck. You mean to tell me that I do not have the right to charge this man?

Society has rejected this man day in and day out, and put him there with me, the crew leader. Society put me, the crew leader, 30 miles back out in the woods, and said: "Well, survive. I am going to give you all you need, but just stay away from me. Do not come to town. We cannot use you in town."

You cannot find a camp. I do not feel in any way that there is a city limit in the United States. I do not believe this. Maybe there are many. They do not want them. They do not need them. "You stay back out there, and we will just give the crew leader hell, and we will take care of it."

I mean, we may as well face the facts, and tell it like it is, and stop ducking the issues: stop fooling legal aid. Stop fooling yourself. Food stamp office: Stop fooling yourself. Get down to the facts.

If you want to do something for these people, make sure that they are in good health. Make sure that you have an investigating team going around who know what they are looking out for.

Get this crew leader, and get him into compliance because you are always going to have migrant truck workers. I do not care how we try to evade that. You are always going to have this. We are stuck with those people 30 miles out in the woods.

Sure, some people charge $10 or $15 for a fifth of wine. It is wrong. But if you do not have wine for them, if you do not—I heard somebody say something about a common service store, commissary work—you mean to tell me. With 50 heads of people, by the time you bring one from the store, another one wants to go. As soon as you bring him back, another one wants to go.

Why don't you have the necessities that this man wants or needs at a reasonable price? I do not have a choice. I do not have a choice, or I would not have a crew.

Anytime you do not have a crew leader, you are going to find hijackers and torn clothes and what-have-you littering your highways, and people getting rides from these people because they have got to have a means to survive. So good Lord! OK.

Mr. WALPOLE. May I support something that he said, Mr. Chairman.

Mr. ANDREWS. Yes.

Mr. WALPOLE. The Charleston County council rejected, several years ago, a South Carolina grant from the Federal Government. The migrant camps would have to be in compliance with the Federal regulations because they no longer want to file up with the migrant camps. It was rejected, not to pay back a loan, but the grant. So the farmer and the crew leader struggle together for housing.

As the South Carolina Migrant Commission, we were challenged by the Governor to come up with some facts and evidence and solutions, suggestions and solutions. We did that.

One of the things that we first came up with was that there is a great need for housing. We recommended how it might be resolved, and we are in the process of carrying that out, we hope.

The second thing that we came up with of importance was to relate to the understanding of the crew leader so that we could deal with the migrant. You do not deal with the migrant without a crew leader, and we feel that some of these grants and all that have been given to the people that we refer to were with good intentions, but we do not know what they are doing.

They are coming into volume from Congress because you are misunderstanding the number of migrants that exist in an area because you are overlapping this legislation with local help, or day haul labor.

So we find that if you separate the migrant people in number versus the day haul labor, maybe the grants would not be nearly so substantial because the number of migrants is not there.

Some years ago, about 4 years ago, we had a hail storm that went through the area, and the newspaper published that, I think if was 40 * * * I forget * * * some tremendous number of thousands of migrants were going to be out of work. It just hit one main farmer primarily.

In come the food stamp people. Many of us got partially wiped out. Myself, as a farmer. Many people who had crops could not get people to the field because somebody was giving out food stamps.

The crew leader spent money to get migrants up. He could not get them to the field. It was much easier to go and stand in line to pick up food stamps, and it created confusion for all of us.

I cannot agree with Mr. Jones more. We need someone when these issues come up. We need somebody to represent us whose hands hit the dirt. I do not want somebody representing me who has forgotten that experience. I do not think that he should have somebody trying to direct traffic in his business who is not a crew leader.

I think the time has come for us to either be dealt with respectably and personally, or take the choice of doing something without our position in society. And I am sure that Mr. Jones can find something else to do, and I can find some other way of making a living without doing this and/but those migrants cannot, and a lot of the day haul people cannot.

I do not know the answer. But I came up here to get a few, and I have gotten more confusion, and I am very confused and concerned about going home to my farm.

I have a son farming with me. According to the statement given here, when he goes down the road to pick up a few people, he has become a crew leader. I have got to have him registered.

Can you tell me whether I should or should not?

Mr. ANDREWS. No.

Mr. WALPOLE. I am scared to death to ask the Labor Department because from the testimony I have heard, I do not see how I can believe the one who is talking to me, whether he is doing what you said, whether the boss said to do it, because it is an administrative procedure.

I ask you, sir, to ask for a moratorium, and not to ask for any indictment until this matter is cleared. If you want to use the Labor Department to educate us, and tell us our needs, fine. We will learn and comply. Do not make us lawbreakers while you are telling us what you want us to do.

Thank you.

Mr. ANDREWS. Mr. Dixon.

Mr. DIXON. Also, the part that states that the contractor should keep the books. I am in agreement with this.

As Mr. Jones has stated, while you are in Florida as a crew leader, when you leave Florida, you become a contractor, but I am speaking of Florida now.

When you are the crew leader in the field, many times, you do not have the knowledge to keep books, as many crew leaders in Florida do not have the knowledge. They know how to recruit people, but they do not know how to keep books.

There are instances where the harvest man is the man that is not in compliance with the law, and that is the one that inflicts the most brutality on the person. He is the one that can get the most people. So he can get a job, but he does not know how to keep books.

I have really seen it happen to me where I went out in the orange grove on the bus in the morning. I never could pick the fruit very good, and if I would pick, say, 50 boxes a day and here is another man that picked a hundred boxes a day, my name would go down on the book: Elmer Dixon picked 50 boxes today, worked 4 hours; but the man John Jones went out and picked 100 boxes a day. He worked

8 hours. I worked the same amount of time that this man did, but the requirement, not the requirement, but the order from the top is to put down this so that you would be in compliance with the minimum wage standard.

So I do not agree with the field form. I call that "keeping the books". I think that the contractor should keep the books, and also make the deductions.

I have had to pay off for some crew leaders because they do not know how to count; they did not know how to multiply, figure out how much a man made.

So we would receive a social security book so I would know how to deduct from each one, but he did not know how to pay off. So I do not think that he should.

Mr. WALPOLE. May I suggest, sir, that the South Carolina Department of Labor has recently formed a branch or division, the migrant labor division. It is State related. This is what you are trying to do. It is impossible to even solve it. Now, we know that, but I do not say that it is impossible for you to pass on to those powers that be to get the State governments to do it.

And I am not so sure that the man from North Carolina may not be right. Maybe the train is turning back. Maybe it is overloaded. Maybe you need to trace it back.

Mr. ANDREWS. I am one of those who thinks that.

Mr. WALPOLE. I know that something has to be done, or you are not going to eat.

Thank you.

Mr. ANDREWS. I tend to agree with that in many areas. I do not think that you can do that in every area, but certainly, in many areas we get better results for less money if we could get back to the local point.

Mr. WALPOLE. This gentleman is going to come out of Florida on you, and in Florida, he may be faced with an entirely different situation from where you are. How can this legislation be adopted to meet the needs? It cannot without creating a problem.

Mr. ANDREWS. I am not arguing that it cannot. Nobody can.

Well, is anyone out there interested in making any comments for the record, and also for our education? May I ask if any of you would like to say something?

I have no way to require you, nor would I want to require you if you prefer not to, but, if any of you here who have not testified would care to identify yourselves, and tell us who you represent, we would be glad to receive it. There are a number of you here, and I can tell from your facial expressions, that you are very much interested in this legislation, and the people who are affected by it.

We are glad that you are here. If you care to identify yourself, and tell us who you represent, we would be glad to receive it.

STATEMENT OF GEORGE SORN, MANAGER, LABOR DIVISION, FLORIDA FRUIT & VEGETABLE ASSOCIATION

Mr. SORN. My name is George Sorn, manager of the labor division of the Florida Fruit & Vegetable Association. We are headquartered in Orlando, Fla., but we represent sugar cane, citrus crop and the California fruit producers in the State of Florida.

We are interested in the well-being of our workers. That is necessary to our operations. Most of our growers grow the high labor using crops.

On the other hand, one of the problems, and not only in labor related areas, is just the overburden of regulations as it affects our producers.

FLCRA and the interpretations put on it by the Department of Labor is one more straw on the camel's back. As this man up here said, it is going to break pretty soon.

We are interested in a good law to correct the problems, but not to register every grower or grower's employee, and that is where we are now in the park.

There is a tremendous amount of difference in enforcement in the area. That is another problem that we have in Florida. In one area, an employee who just takes three or four workers back in the company's truck back and forth to work is registered as a truck driver. If he happens to have two loaders on his truck going from one field to another, we had an enforcing agency attempt to get that truck driver to register as a crew leader.

These are some of the things that are harassing the grower and, as I say, it could be the straw that broke the camel's back.

Mr. Andrews. What was your name?

Mr. Sorn. George Sorn.

Mr. Andrews. Let me ask you this question, if I may.

I want you to imagine that if "registration" meant no more than registration, just what that word means in the dictionary * * * in other words, just your social security number, your address, and some basic sort of common sense questions, and that was all there was to it, would there be so much objection?

Mr. Sorn. I would say that I am registered as an employee of the crew.

Mr. Andrews. It seems that registration has come to mean not just registration, but a lot of other attendant and expensive things.

Mr. Sorn. Yes, sir. What we call "red tape".

Mr. Andrews. The young lady standing.

STATEMENT OF KATHY MIRELES LEYDEN, EAST COAST MIGRANT HEALTH, WASHINGTON, D.C.

Ms. Leyden. My name is Kathy Mireles Leyden. I work for the East Coast Migrant Health. We have a health care delivery system along the east coast. We work with other public health agencies, and my interest is with the workers.

It is unfortunate that people do not realize the problems out there in the camps, as Mr. Jones well knows.

The people are invisible to most of us even though everyday we use their crops that they put on our fields, and to say that it is not necessary, or that we should hold these regulations until we come up with some better ones is not going to improve things out there in the field.

I realize that all of the agencies are under constraints with manpower, whatever, and everybody kind of tries to protect their own little roles, and whatever they have to do, but we are dealing with human beings out there who are being brutalized, who are being deprived of economic opportunity.

I think that this subcommittee is talking about economic opportunity, and to deny even this little bit that has been accomplished since 1974 is going back, you know, when there was no contractor's law, and our organization certainly is planned to send in some material to your subcommittee on how we feel about farmworkers, about their treatment, about the brutality.

I know. You know, it is a subject that is very dear to my heart because I grew up as a seasonal farmworker in Ohio, but I have not forgotten what it is like to be out there in the camps.

I think it is something that the subcommittee should not forget. And the people with the big corporations, or whatever, you have good housing, and/but I do not know if anybody is here from Coca Cola. People come around and say: "We have camps for our workers. We have housing."

Well, Coca Cola did the same thing, but what they did not tell the people is that they got a grant from the Federal Government to build that housing. They did not use their own money.

So you know, you can talk about the goodness of your heart, and look at what I have done, but tell the real part. Tell why they did it.

Coca Cola did it for their own gain because they were supplying workers. It was not for them, the workers. So you know, one hand washes the other, and the farmworkers are not asking for more than they are entitled to. They are asking for an opportunity to be treated as human beings with some dignity and an ability to provide for their families; and yes, most of us do not want to go in and apply in the Federal programs. It is not simply handing out food stamps. They handle this, that and the other.

There is something inside of you as a human being that still regrets that point when you have to go down inside the door and be rejected, and looked down upon.

Those people who man the social agencies still look down upon the people that go in to apply. A lot of them are denied. It is not simple to get food stamps when you go in hungry and wait 30 days. What are you supposed to do in those 30 days? We find people feeding people bread and water for days at a time.

Does that make sense in America when these are the same people who put food on your table, that they should have bread with water? A lot of young people are suffering from malnutrition. It does not have to be in the camps, in the day camp workers.

They still have not reached any kind of step up into the mainstream of the system.

If we try to deny them this little bit, this protection of having the crew leaders that do brutalize the people controlled, if we cannot control them in some way, then they are not ever going to get anywhere.

It is just a small part toward giving them some kind of dignity, and food to hold them in the mainstream.

Mr. Andrews. Thank you.

Is there anyone else?

STATEMENT OF RODERICK K. SHAW, JR., GENERAL COUNSEL, CITRUS INDUSTRIAL COUNCIL, LAKELAND, FLA.

Mr. SHAW. Mr. Chairman, just to end on an optimistic note, I am confident that those of us who worked on this problem for so long, and so many of us have heard testimony on both sides, can, over the next several weeks, work together in solving these problems so that the workers will be fully and effectively protected while, at the same time, not having the overreaching bureaucracy and red tapish type of regulations that all of us ought to seek to avoid. I am confident that we can accomplish this by working with you and your staff.

Mr. ANDREWS. I am sure. We certainly do hope so.

We appreciate in all good faith all the points of view. I am really impressed that nobody has come in here with animosity for a fellow-life, or trying to make life worse for anybody. In fact, very much to the contrary. We have had good witnesses and, I believe, conscientious. I think they are like those of us who want to try to alleviate the bad that exists in the farm worker programs throughout the country and, at the same time, not impose unreasonable burdens on these farm employees, and the people in the processing areas. It is a great industry. It is, I think, the best we have. I really do think that if it were not for the exportation of food, and certainly, for our food supply domestically, the country could not exist.

There are many necessary industries, but I do not know of one that is any more basic and necessary than our food industry. I think we all want to work to see it get better, fairly and reasonably. I ask you to help us, all of you, and do not be afraid if you have the assistance of associations.

We do not want to leave things bad for another round for another committee, and the misery for another year.

In the meanwhile, let's get together, and see if we can get some reasonable legislation for everybody.

Surely, Mr. Goodling.

Mr. GOODLING. Sitting here listening to a couple of days of testimony, I do not think that we need all that much legislation. I think the Department has heard all of the testimony plus all other facts and figures.

Our staff knows the feeling of the Congress, and I just have a feeling that maybe it would not take too much legislation. It may just take some more common sense and sitting down and figuring what we have done wrong, and the direction we have to go. It is all relatively new. I am sure it has to get better.

So I have the feeling that we would not have to deal with too much legislation. We just have to get together, and come up with a meeting of the minds as to how to help everyone. Of course, the purpose of legislation does not always do that.

Mr. SHAW. A lady spoke there in regard to food stamps. I would like to suggest that she check your Government Marketing Division because what we have done is set up, I think, six different local chapters, or local offices around the State, and have recommended to the Governor that the distribution of food stamps be checked with those offices before they are being distributed because they have had very difficult times where they are justified in getting food stamps that it takes so long to get them. If you went through these offices, it could probably be 24 hours, or 12 hours, and even before that. Maybe they could even get it the same day because of the local institution and administration of the need. And I think that they can help in a lot of other areas, too.

Mr. ANDEWS. You are making a very valuable contribution to getting at what this act is aiming to do, and that is to help these people.

Mr. SHAW. Credit should go to others. We are sitting and giving views, but I think that views are being given helpfully and, hopefully, they will be applied by the Department of Labor.

Mr. GOODLING. I love his philosophy of local and State organizations, not us doing it, not us.

Mr. ANDREWS. Again, we thank you. You are welcome here at any time, not only for the hearings, but any time.

[The prepared statement of the South Carolina Migrant Commission presented by John B. Walpole, the chairman, to which is attached a letter dated December 27, 1977, addressed to Johnnie E. Goodnight, Jr., and signed by Barbara J. Pariente, of the law offices of Cone, Owen, Wagner, Nugent, Johnson & McKeown, and a statement dated January 27, 1978, entitled, "Destruction of the American Fruit and Vegetable Farmer Resulting from Importation of Foreign Fruits and Vegetables—Statement of Problem" follow:]

STATEMENT PRESENTED BY JOHN B. WALPOLE, CHAIRMAN, SOUTH CAROLINA MIGRANT COMMISSION

We appreciate this opportunity to present the views of the South Carolina Migrant Commission on the problems of definition and interpretation that have arisen since the passage of extensive amendments to the Farm Labor Contractor Registration Act in 1974.

Mr. Chairman, I am on the South Carolina Migrant Commission as a Producer Farmer of Vegetables in South Carolina. This Commission was created by legislation of the South Carolina General Assembly with commission members appointed by the Governor.

Our first order of business was to define the term Migrant Worker. I would like to go on record in support of bill H.R. 8233 as expressing the Commission position. I believe that it was the intent of Congress to protect and assist the agricultural worker who is employed by a Crew Leader and does not return to his permanent residence each day. In addition I would like to go on record as supporting the position taken yesterday by A.F.B.

The Assistant Secretary of Labor Donald Elisburg has indicated in his report yesterday a definite need for a good working relationship between the American Food Producers and the Federal Government. However, there seems to be a definite conflict of opinions as expressed by Mr. Elisburg's report and the bills presented by the Congressmen to your subcommittee.

I understand the procedures by which this Committee must function in helping determine what is best for our country. However, I wish to bring to the attention of this Committee and all of Congress the following fact.

While Congress deliberates and is being paid regardless of production, you are creating undue hardship on the food producing industry that *gets paid only after they produce.*

While we are waiting, please let me inform you of another alarming fact—food imports from Mexico are increasing at an alarming rate.

This food is produced where there is no minimum wage standard, no EPA requirements. Attached, you will find a report of these conditions from the South Carolina Tomato and Vegetable Growers, Inc. I request that this be entered in the record also.

I deplore any personal abuse of any segment of our society. This is today called Human Rights. However, I believe this also should apply to any regulatory agency that usurps authority over the intent of congressional legislation.

In conclusion Mr. Chairman please let me urge you to declare to your colleagues in Congress the urgent need of a better public image of our agricultural workers so vital to the food producing industry of our nation. I count it an honor to be associated as co-producer of food for the greatest country in the world. Thank you.

Cone, Owen, Wagner, Nugent, Johnson & McKeown,
West Palm Beach, Fla., December 27, 1977.

Re Goodnight; in re remedies against sale of produce by Mexicans at cost or below.

Johnnie E. Goodnight, Jr.,
Immokalee, Fla.

Dear Mr. Goodnight: At your request we have completed preliminary review of the applicable laws which may be used by the farmers in southwest and southeast Florida to prevent the dumping of Mexican tomatoes, eggplants, cucumbers and green peppers in the various markets along the east coast. Basically there are four laws which apply and each will be discussed briefly in turn:

1. 15 U.S.C. Section 72—Under this section persons cannot import or assist in importing articles from a foreign country at a price substantially less than the actual market value or wholesale price of such articles if such acts are done with the intent of destroying or injuring industry. Suit may be brought by a private person in Federal Court where the defendant resides or is found or has an agent and provides that a private person shall recover treble damages, costs and attorneys' fees. Although it does not specifically say so, it may be possible to seek injunctive relief.

The advantages of this section are that if an award is made the damages can be substantial. The disadvantages are that court litigation is time consuming and that there will be difficulty in finding the best forum since the distribution has been occurring all over the east coast. There may be a possibility of sueing in the district court in Arizona if we can show that the two brokers who are importing the produce are causing the produce to be sold at less than the actual market price or are assisting. Of course, it would be extremely difficult to establish intent.

2. The next provision is 19 U.S.C. Section 1337 which declares unfair practices in import trade to be unlawful. Under this provision a complaint must be filed with the International Trade Commission in Washington, D.C. The International Trade Commission has one year to conclude its investigation. The remedies for a violation of this section include ordering the unfair methods to be stopped and/or ordering that the articles may be excluded from entry.

3. 19 U.S.C. Section 21.01—This act is known as the Trade Act of 1974. Under Section 2251 of this act a group of aggrieved persons may file a petition for import relief with the International Trade Commission and the International Trade Commission then institutes an investigation to determine if the article is being imported in such increased quantities as to be the substantial cause of serious injury. The International Trade Commission then makes a recommendation to the President. Under this section the investigation shall not take more than six months.

4. 19 U.S.C. Section 160—This act is also known as the Anti-Dumping Act and may be the best of the administrative routes. This act provides for relief when there is a finding by the Secretary of the Treasury that foreign merchandise is being or is likely to be held in the United States at less than its fair value. The administrative regulations under this section go on to define fair value in a fairly complex way.

This act requires that a determination be made promptly after the Secretary of Treasury has reason to believe a violation exists.

I will be able to make a more detailed presentation after a thorough review of the regulations. However, it would be my advice to proceed both the administrative level in Washington, D.C. as well as in the Federal District Court either in south Florida or in Arizona. Certainly, if administrative relief is granted, this would be far more effective than scattered law suits. I have taken the liberty of contacting a Washington law firm which specializes in trade regulations and if your group of farmers decides to pursue this matter, we would want to associate the Washington law firm to handle the administrative end of this.

Sincerely yours.

Barbara J. Pariente.

DESTRUCTION OF THE AMERICAN FRUIT AND VEGETABLE FARMER RESULTING FROM IMPORTATION OF FOREIGN FRUITS AND VEGETABLES

STATEMENT OF PROBLEM

The trend which began in the early 60s of continued growth in the amount of fresh vegetables imported into the United States from Mexico has reached alarming proportions as of the 1977–1978 growing season. Whereas prior to this time, the area of import growth was centered in the area of tomatoes, the tremendous increase in the importation of vegetables incorporates peppers, squash, cucumbers, and eggplants as well as tomatoes. Moreover, with the possibility that trade relations will be re-established with Communist Cuba, the sophisticated farming operations in that country will pose an additional death threat to the American farmer in the area of fresh fruits and vegetables.

The economic impact upon American farm families and families of farm workers who depend upon American agriculture for their livelihood will be severe. Moreover, the farmers and farm workers wish to remain in agriculture which is a useful and basic part of the American labor market and economy. In Florida, the elimination of the farm businesses, the use of agricultural land, and the jobs associated therewith, would be a serious mistake which would be impossible to correct. Lastly, with the American fruit and vegetable farmer eliminated, the Mexican and Cuban importers of fresh fruits and vegetables would be virtually in control of the market, monopolizing that portion of trade. The effect on prices and therefore on the American consumer would be severly felt.

It should be noted that with the exception of California and Texas, Florida is the largest employer of agricultural labor in the United States. According to the Florida Department of Commerce, approximately 100,000 persons are presently working on Florida farms in fruit and vegetable production. Approximately 30,000 workers are in citrus; most of the others are employed in winter vegetables.

The character of the farm employers is also significant. Individual or family ownership is the dominant type of organization of Florida farms accounting, together with partnerships, for approximately 90 percent of all farms in Florida; whereas, corporations, including family-owned corporations, account for less than 10 percent of the total number of farms.

Statistics reflect that cash receipts from farm marketing, by commodity groups, in Florida, in 1975 showed vegetables and melons comprising 19.7 percent of the total farm produce at a value of some 477.6 million dollars.

In March 1969, in response to the Unted States Congress, the United States Department of Agriculture completed Agriculture Economic Report No. 154 entitled *Supplying U.S. Markets With Fresh Winter Produce; Capabilities of U.S. and Mexican Production Areas.* The study was updated by the department in September 1971, and is currently out of print. A 1976 study, Agriculture Economic Report No. 348, *Mexican Competition For the U.S. Fresh Winter Vegetable Market*, reaches conclusions that are already outdated by the experience of American fruit and vegetable farmers.

This most recent study found: (1) a more stable fresh winter vegetable market, (2) a possible strengthening of Florida's share of U.S. market in tomatoes, (3) some contraction in Mexico's share of winter bell peppers, (4) few further inroads by Mexico into the eastern U.S. markets for cucumbers and eggplant with further analysis needed.

In fact the experience of American winter fruit and vegetable farmers indicates that events are moving quickly to jeopardize their very existence.

Mexican fruit and vegetables are beginning to flood the eastern markets in increasing quantities so as to be a substantial cause of serious injury to farmers. Apparently, the vegetables are being sold on eastern markets at prices below the actual cost of freight, duty and other charges and expenses necessarily incident to the importation and sale in the U.S. The continuation of this illegal action will result in a situation of monopoly and resultant price increases to the American consumer.

The freeze of last year in Florida virtually destroyed the winter vegetable crop and resulted in an emergency declaration by the President of the United States. The United States Government made an investment in Florida Agriculture and in Agricultural workers and their families. Emergency unemployment benefits were paid to more than 36,000 farm workers in the 90 day period from January 17, through April 16, 1977. The Farmers Home Administration estimates that in 1977, because of adverse weather, approximately $80 million was extended in credit under the emergency loan program, $20 to $25 million to fruit and vegetable farmers. This action by the Federal Government represents a substantial investment in Florida Agriculture.

Also, the freeze resulted in windfall profits to Mexican vegetable producers. Production acreage was greatly increased. And it appears, from activities within the last month, that a substantial investment is being made in the destruction of what has been considered to be a stable pattern in the market for U.S. and Mexican fresh winter vegetables.

Immediate Congressional and Administration initiative is essential to pinpoint facts which seem to point to a massive flooding of U.S. markets with Mexican produce at prices substantially below fair market prices.

If in fact the profits from Mexican fresh winter vegetable production of 1977 are being invested in an effort to destroy the market for U.S. fresh winter vegetable farms—and evidence indicates that this is in fact true—a situation exists which calls for immediate decisive action. Florida winter vegetable farmers have organized several action committees which are prepared to seek relief from the President through the International Trade Commission. Quick administrative remedies may be available, including a Petition for Import Relief pursuant to 19 U.S.C. § 2251, the imposition of a dumping duty pursuant to 19 U.S.C. § 160, and a Petition pursuant to 19 U.S.C. § 1337 to stop unfair practices in import trade.

Perhaps the most hopeful, single remedy is 19 U.S.C. § 2251, The Trade Act of 1974. Recently the President granted relief to American sugar farmers under this Act, and it may be the best avenue for emergency response to the crisis of American elimination from the U.S. fresh winter vegetable market.

A Petition for Import Relief is filed with the International Trade Commission which then institutes an investigation to determine if the article is being imported in such increased quantities as to be the substantial cause of serious injury. The Commission then makes a recommendation to the President. Investigation shall not take more than six months. Action could come much more quickly, particularly if legislative fact finding establishes the seriousness and emergency nature of the present situation.

19 U.S.C. § 160, known as the Anti-Dumping Act, is the other promising administrative remedy. It provides for relief when there is a finding by the Secretary of the Treasury that foreign merchandise is being or is likely to be sold in the U.S. at less than its fair value. The Act requires that a determination be made promptly by the International Trade Commission after the Secretary makes an initial determination that a violation exists.

Action by the legislature is required to review the adequacy of present statutory remedies, and to develop and enact amendments as required. Most important, however, is the power of the Congress to develop thorough, essential information on the problem. In October, 1977, hearings were held on imported tomato restrictions by a sub-committee of the House Committee on Agriculture.

The hearings concerned a statutory marketing order requirement on tomatoes imported from Mexico. The hearings did not address other vegetable crops. The legislative proposal was piecemeal and inadequate as a response to the problem of Mexican competition for the U.S. fresh winter vegetable market. Hearings are needed on a broader basis, perhaps on the adequacy of present statutory protections of a fair and free market for vegetables in the face of foreign competition.

In addition to the clear, positive goals of insuring that American farmers and farm workers can continue to work in a needed segment of the economy and that American land resources can be continued in agricultural production as a part of a balanced national growth policy, there are other critical goals:

Environmental and public health requirements in American farming related to pesticides are not applied equally in Mexico. DDT is used on Mexican crops and the immediate effect is lower costs. For green peppers, for example, DDT use may lower costs as much as $200 per acre. However, the U.S. has decided that the long range health and environmental costs require the prohibition of DDT. Similarly, the chemical substances of Vidate and Monitor are subject to restrictions in domestic use. Restrictions enacted to protect public health and the environment should be imposed equally on domestic and foreign produce.

The Environmental Protection Agency would likely be the lead Federal Agency to insure this result.

Historically, American farm workers have not enjoyed the protection of other workers under the laws of the U.S., but rather have been the subject of specific exclusions. This situation is being redressed, both by the U.S. Congress and the Legislatures of the several states. Clearly, benefits and protections imposed, and rightly so, by Government have the effect of increasing costs of production. Clearly, labor costs in Mexico are and will continue to be for the foreseeable future substantially lower than American farm labor costs. American policy must also consider this factor in attempting to insure a fair and free market which can result in the best quality product being delivered from the farm to the table of the American consumer at the lowest possible cost. Elimination of American jobs in agriculture and elimination of American farmers from American winter vegetable markets would not appear to serve the public interest.

Conclusion: Unless immediate and affirmative action is taken by the President of the United States and the Congress, the death knell for the American winter vegetable farmer will be sounded.

Also, the Spring Vegetable farmer will be forced out of business. We need immediate action! Please Help! (Added by John B. Walpole, Sunny Point Farms, Wadmalaw Island, S.C. 29487, past president of South Carolina Tomato Association; Chairman of South Carolina Migrant Commission.)

[Whereupon, at 4:37 p.m., the hearing was concluded.]

APPENDIX

Regulations, Part 40: Farm Labor Contractor Registration
Subpart A-Registration
Subpart B-Administrative Proceedings

Title 29 of the
Code of Federal Regulations

Registration Requirements and Administrative Proceedings including
Assessment, Notice, and Collection of Civil Money Penalties for Violations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1369
(Revised May 1977)

[This publication conforms to the Code of Federal Regulations as of May 5, 1977, the date this reprint was authorized.]

PART 40—FARM LABOR CONTRACTOR REGISTRATION

Subpart A—Registration of Farm Labor Contractors and Their Full-Time Employees

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40.271 Retention of official record.
40.272 Certification of official record.

AUTHORITY: Sec. 14, 78 Stat. 924, and sec. 17, 88 Stat. 1659 (7 U.S.C. 2053); Secretary's Order No. 16–75, 40 FR 55913; and Employment Standards Order 2–75, 40 FR 56743.

SOURCE: The provisions of this Part 40 appear at 41 FR 26820, June 29, 1976, unless otherwise noted.

Subpart A—Registration of Farm Labor Contractors and Their Full-Time Employees

GENERAL

§ 40.1 Purpose and scope.

(a) Congress, in enacting the Farm Labor Contractor Registration Act of 1963, as amended ("the Act"), found "that the channels and instrumentalities of interstate commerce are being used by certain irresponsible contractors for the services of the migrant agricultural laborers who exploit producers of agricultural products, migrant agricultural laborers, and the public generally * * *." It therefore requires "that all persons engaged in the activity of contracting for the services of workers for agricultural employment comply with the provisions of this Act and all regulations prescribed hereunder by the Secretary of Labor."

(b) These regulations implement this finding and policy.

(c) The Act requires certain persons to obtain Certificates of Registration or Farm Labor Contractor Employee Identification Cards prior to performing any activities which constitute engagement in farm labor contracting within the meaning of the Act and prescribes the responsibilities for holders of such certificates or employee identification cards. In addition, persons to whom farm workers are furnished by farm labor contractors also have specific responsibilities.

(d) The Act empowers the Secretary of Labor to enforce the Act, conduct investigations, issue subpenas, and, in the case of designated violations of the Act, to impose sanctions, including the refusal to issue or to renew or the suspension or revocation of a Certificate of Registration or Farm Labor Contractor Employee Identification Card. As provided in the Act, the Secretary is empowered, among other things, to impose an assessment and to collect a civil money penalty of not more than $1,000 for each violation, to deny a person the facilities and services available under the Wagner-Peyser Act, to seek a temporary or permanent restraining order in a Federal District Court, and to seek the imposition of criminal penalties on farm labor contractors or their employees who willfully and knowingly violate any provisions of the Act.

(e) This Subpart A sets forth the substantive regulations promulgated by the Secretary, pursuant to authority contained in the Act, relating to the issuance, renewal or replacement of a Farm Labor Contractor Certificate of Registration or a Farm Labor Contractor Employee Identification Card, the obligations and responsibilities of persons issued such certificates or identification cards, the obligations and responsibilities of persons furnished farm workers by farm labor contractors, the grounds for refusal to issue or to renew or for the revocation or suspension of such certificates or identification cards, and the sanctions authorized by the Act. It also provides for the imposition of civil money penalties for violation of the Act or regulations issued thereunder and indicates factors to be considered by the Secretary of Labor or authorized representative in assessing the amount of such penalty.

(f) Subpart B sets forth the rules of practice for administrative hearings relating to a refusal to issue or to renew, or the suspension or revocation of either document. It also outlines the procedure for filing a challenge to a proposed administrative action relative to violations and summarizes the methods provided for collection and recovery of the civil money penalty.

§ 40.2 Definitions.

For purposes of this part:

(a) The term "person" includes any individual, partnership, association, joint stock company, trust, or corporation.

(b) The term "farm labor contractor" means "any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes or transports migrant workers (excluding members of the contractor's immediate family) for agricultural employment. This term shall not include—

(1) Any nonprofit charitable organization, public or nonprofit private educational instiuttion, or similar organization;

(2) Any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation;

(3) Any full-time or regular employee of any entity referred to in Paragraph (b)(1) or (2) of this section who engages in such activity solely for his employer on no more than an incidental basis;

(4) Any person who engages in such activity—

(i) Solely within a 25 mile intrastate radius of his permanent place of residence and

(ii) For not more than 13 weeks per year;

(5) Any person who engaged in any such activity for the purpose of obtaining migrant workers of any foreign nation for employment in the United States, if the employment of such workers is subject to—

(i) An agreement between the United States and such foreign nation or

(ii) An arrangement with the Government of any foreign nation under which written contracts for the employment of such workers are provided for and the enforcement thereof is provided for through the United States by an instrumentality of such foreign nation;

(6) Any full-time or regular employee of any person holding a Certificate of Registration under this Act;

(7) Any common carrier or any full-time regular employee thereof engaged solely in the transportation of migrant workers;

(8) Any custom combine, hay harvesting, or sheep shearing operation; or

(9) Any custom poultry harvesting, breeding, debeaking, sexing, or health service operation, provided the employees of the operation are not regularly required to be away from their domicile other than during their normal working hours.

(c) The term "fee" includes any money or other valuable consideration paid or promised to be paid to a person for services as a farm labor contractor.

(d) The term "agricultural employment" means employment in any service or activity included within the provisions of Section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)), or Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)) and the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state.

(e) The term "migrant worker" means an individual whose primary employment is in agriculture, as defined in Section 3(f) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(f)), or who performs agricultural labor, as defined in Section 3121(g) of the Internal Revenue Code of 1954 (26 U.S.C. 3121(g)), on a seasonal or other temporary basis.

(f) The term "immediate family" of the farm labor contractor includes only—

(1) A spouse;

(2) Children, stepchildren, and foster children;

(3) Parents, stepparents, and foster parents; and

(4) Brothers and sisters.

(g) The term "Secretary" means the Secretary of the United States Department of Labor or the Secretary's duly authorized representative.

(h) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, and such authorized representative as may be designated by the Administrator to perform any of the functions of the Administrator under this part.

(i) "Solicitor of Labor" means the Solicitor, United States Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under this part.

(j)(1) The "Administrative Law Judge" means a person appointed as provided in 5 U.S.C. 3105 and Subpart B of Part 930 of Title 5 of the Code of Federal Regulations (see 37 FR 16787) and qualified to preside at hearings under 5 U.S.C. 557.

(2) The "Chief Administrative Law Judge" means the Chief Administrative Law Judge, United States Department of Labor, Washington, D.C. 20210.

(k) The term "State" means any of the States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

(l) "Convicted" means that a final judgment of guilt has been rendered by a court of competent jurisdiction from which no opportunity for appeal remains.

(m) A "full-time or regular employee" who is required to obtain a Farm Labor Contractor Employee Identification Card is a person who performs farm labor contracting activities solely on behalf of a farm labor contractor holding a valid Certificate of Registration and is not an independent contractor.

(n) A "Certificate of Registration" is the certificate issued by the Administrator which permits a person to engage in activities as a farm labor contractor.

(o) A "Farm Labor Contractor Employee Identification Card" is a card issued pursuant to this part permitting a full-time or regular employee of a person holding a valid Certificate of Registration to engage in activities as a farm labor contractor.

(p) A farm labor contractor is deemed an "owner" of a vehicle or housing facilities if said person has a legal or equitable interest therein.

(q) A farm labor contractor is in "control" of a vehicle or housing facilities regardless of the location of such facilities if said person is in charge of or has the power or authority to oversee, manage, superintend or administer the vehicle or housing, either personally or through an authorized agent or employee acting on behalf of said farm labor contractor, irrespective of whether compensation is paid for engaging in any of the aforesaid capacities.

(r) An "illegal alien" is any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment.

(s) A "common carrier" by motor vehicle is one which holds itself out to the general public to engage in transportation of passengers for hire, whether over regular or irregular routes, and which holds a valid certificate of authorization for such purposes from an appropriate local, State or Federal agency.

(t) The "Wagner-Peyser Act" is the Act of June 6, 1933 (48 Stat. 113; codified in 29 U.S.C. 49, *et seq.*), providing *inter alia* for the establishment of the U.S. Employment Service.

(u) The term "Employment Service of the various States" means a State agency vested with all powers necessary to cooperate with the U.S. Employment Service under the Wagner-Peyser Act.

[42 FR 22364, May 3, 1977]

§ 40.3 Certificate of Registration required.

Any person who desires to engage in any activity as a farm labor contractor, as defined in the Act and these regulations, must first obtain a Certificate of Registration authorizing each such activity.

§ 40.4 Farm Labor Contractor Employee Identification Card required.

Any person desiring to engage in recruiting, soliciting, hiring, furnishing, or transporting migrant workers solely on behalf of a farm labor contractor holding a valid Certificate of Registration, issued pursuant to the Act and these regulations, as a full-time or regular employee of such contractor must obtain a Farm Labor Contractor Employee Identification Card authorizing such activity or activities. Such identification card must be obtained prior to the employee's engagement in any of the aforementioned farm labor contractor activities and must show the name of the farm labor contractor for whom such activities are to be performed.

§ 40.5 Corporations, partnerships, associations and other organizations.

Any corporation, partnership, association or other organization which is a farm labor contractor within the meaning of the Act must obtain a Certificate of Registration. Any employee, including any officer or director of such a corporation, or partner or employee of a partnership, or member, officer, or other employee of an association or any other organization, who engage in farm labor contractor activities as a full-time or regular employee of such business organization, shall obtain a Farm Labor Contractor Employee Identification Card prior to so engaging.

§ 40.6 Public central registry.

The Administrator shall maintain a public central registry of all persons issued Certificates of Registration or Farm Labor Contractor Employee Identification Cards. All information filed therein shall be made available upon request in accordance with Part 70 of this title. Requests for information concerning such registry may be directed to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210.

§ 40.7 Compliance with State statutes.

This Act and the provisions contained in this part are intended to supplement State action and compliance with this Act or this part shall not excuse anyone from compliance with appropriate State law and regulation.

§ 40.8 Filing of applications, notices and documents.

Unless otherwise prescribed hereinafter, all applications, notices and other documents required or permitted to be filed by these regulations shall be filed in accordance with the provisions of §§ 40.220 through 40.223 of this part.

§ 40.9 Accuracy of information, statements and data.

Information, statements and data submitted in compliance with the provisions of the Act or this part are subject to Title 18, Section 1001, of the United States Code which provides:

§ 1001. *Statements or entries generally*

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

REGISTRATION REQUIREMENTS

§ 40.11 Filing of applications for Certificates of Registration.

(a) Applications for an initial or renewal Certificate of Registration are available at, and may be filed in, any office of the Employment Service of the various States.

(b) Registration under the Federal law is required whether or not licensing or registration of farm labor contractors is required under State law.

§ 40.12 Execution of application for Certificate of Registration.

The application shall set forth the information required thereon, shall be subscribed and sworn to by the applicant, and shall have attached the applicant's fingerprints on Form FD-258 as prescribed by the U.S. Department of Justice.

§ 40.13 Appointment of Secretary as agent for substituted service.

No Certificate of Registration shall be issued unless and until each applicant executes a writing which shall be subscribed and sworn to and which shall contain the following declaration:

I do hereby designate and appoint the Secretary of Labor, United States Department of Labor, as my lawful agent to accept service of summons in any action against me, at any and all times during which I have departed from the jurisdiction in which such action is commenced or otherwise have become unavailable to accept service, and under such terms and conditions as are set by the court in which such action has been commenced.

§ 40.14 Vehicle liability insurance.

Before any person may transport, within the meaning of the Act, migrant workers and their property in any vehicle which such person owns, operates, controls, or causes to be operated, compliance with the insurance or financial responsibility requirements of the Act must be shown by submitting the following, except to the extent that other arrangements pursuant to § 40.15 of this part have been approved by the Secretary:

(a) A completed Farm Labor Contractor vehicle liability certificate of insurance showing that the passenger hazard is included (as evidence of liability insurance which covers the workers while being transported). Such certificate represents that a vehicle liability insurance policy, including a farm labor contractor liability endorsement, provides insurance in an amount not less than the amounts applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act and regulations promulgated pursuant thereto. These amounts currently are as follows:

Insurance required for passenger equipment

	12 or less passengers	More than 12 passengers
Limit for bodily injuries to or death of 1 person	$100,000	$100,000
Limit for bodily injuries to or death of all persons injured or killed in any 1 accident (subject to a maximum of $100,000 for bodily injuries to or death of 1 person)	300,000	500,000
Limit for loss or damage in any 1 accident to property of others (excluding cargo)	50,000	50,000

The certificate also represents that the insurance was obtained from an insurance carrier licensed or otherwise authorized to do business in the State in which the insurance is obtained.

(b) If the passenger hazard has been excluded from the farm labor contractor vehicle liability certificate of insurance referred to in paragraph (a) of this section applicant shall submit in addition to such certificate of insurance a completed farm labor contractor standard accident policy certificate of insurance as evidence of the issuance of a farm labor contractor standard accident policy. Said policy or policies shall be issued by an insurance carrier licensed or otherwise authorized to do business in the State in which the insurance is obtained. The coverage afforded by such substitute insurance policy or policies shall not be less than the minimum amounts required in paragraph (a) of this section.

[41 FR 27318, July 2, 1976]

§ 40.15 Proof of financial responsibility in lieu of insurance.

Financial responsibility in lieu of insurance may be evidenced by a liability bond executed by the applicant, identified in the instrument as the "principal," together with a third party, identified in the instrument as the "surety," to assure payment of any liability up to $500,000 for damages to persons or property arising out of the applicant's ownership of, operation of, or causing to be operated any vehicle for the transportation of migrant workers in connection with the business, activities, or operations as a farm labor contractor. The "surety" shall be one which appears on the list contained in Treasury Department Circular 570, or which has been approved by the Secretary under the Employee Retirement Income Security Act of 1974 (Pub. L 93-406). Treasury Department Circular 570 may be obtained from the U.S. Treasury Department, Audit Staff, Bureau of Government Financial Operations, Washington, D.C. 20226.

§ 40.16 Qualifications and eligibility of insurance carriers.

(a) No certificate of insurance issued by an insurance carrier in accordance with this part will be accepted, unless said insurance carrier meets the following requirements:

(1) The insurance carrier possesses and maintains surplus funds (policyholders' surplus) of not less than the minimum amount required by the U.S. Treasury Department, which minimum shall be determined on the basis of the values of assets and liabilities as shown in its financial statements filed with and approved by the insurance department or other insurance regulatory authority of the State of domicile (home State) of such company, except in instances where in the judgment of the Administrator additional evidence with respect to such values is considered necessary; and

(2) The insurance carrier has a general policyholder's rating of B or better

in the current issue of "Best's—Insurance Reports—Fire and Casualty," or a "recommended" rating in the current issue of "Best's—Insurance Reports—Life."

(b) If the insurance carrier is not listed in the current issue of Best's, or, if listed, is not assigned a general policyholder's rating of B or better or "recommended" whichever is applicable, such carrier may request approval for eligibility by submitting to the Administrator its latest financial statement, as filed with the insurance department of its home State, on the standard form, with all exhibits and schedules included, and copies of reports of examination on conditions and affairs, as prepared by State supervisory authorities and such other information as the Administrator may request.

§ 40.17 Duration of insurance or liability bond.

Any insurance policy or liability bond which is obtained pursuant to this Act shall provide the required coverage for the full period during which the applicant for a Certificate of Registration shall be engaged in transporting migrant workers within the meaning of the Act during a calendar year.

§ 40.18 Limitations on cancellation of insurance or liability bond.

Any insurance policy or liability bond required by the Act or this part shall provide that it shall not be cancelled, rescinded, or suspended, nor become void for any reason whatsoever during such period in which the insurance or liability bond is required by the Act to be effective, except upon the expiration of the term for which it is written; or unless the parties desiring to cancel shall have first given thirty (30) days notice to the Administrator. The notice will include a statement setting forth the reason for cancellation, rescission, or suspension of such policy or bond. The notice shall be in writing and forwarded via certified or registered mail, addressed to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210. Said thirty (30) days notice shall commence to run from the date notice is actually received by the Administrator.

§ 40.19 Authorization to transport migrant workers.

(a) No farm labor contractor may transport migrant workers within the meaning of the Act, unless said person shall submit—

(1) Written proof of insurance or financial responsibility, as required by §§ 40.14 and 40.15 of this part;

(2) A statement in the manner prescribed by the Secretary identifying each vehicle to be used by the applicant for the transportation of migrant workers and under the applicant's ownership or control; and

(3) Written proof that every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations promulgated by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation.

(b) If the farm labor contractor is to drive a vehicle for the transportation of migrant workers, the contractor must seek authorization for such activity by—

(1) Submitting with the application for the initial Certificate of Registration a doctor's certificate on the prescribed form, and when applying for a renewal Certificate of Registration with authorization to drive, a new completed doctor's certificate must be submitted if the previous doctor's certificate is more than 3 years old; and

(2) Submitting evidence of an appropriate license to operate such vehicle.

§ 40.20 Authorization to house migrant workers.

(a) If an applicant for a Certificate of Registration is the owner of or will control facilities to be used for housing migrant workers during any period for which such a certificate is sought, said applicant shall submit—

(1) A statement identifying such facilities; and

(2) Written proof that the housing facilities comply with Federal safety and health standards as prescribed in either 20 CFR 620.4 or 29 CFR 1910.142 and applicable State standards of safety and health. Such written proof may be either a statement signed by the person to whom migrant workers are furnished by a farm labor contractor attesting that the housing facilities comply with Federal safety and health standards and also with applicable State safety and health standards, or a written statement containing an attestation with equal effect and signed by the applicant, or written statements issued by an authorized State and Federal Agency.

(b) Should the required written proof be unavailable at the time of filing an application, the applicant must attest in writing that migrant workers in the applicant's crew will not be housed in any facilities under the ownership or control of the applicant that do not conform to all applicable Federal and State safety and health standards. In such event, if otherwise eligible, the applicant will be issued a Certificate of Registration without a housing authorization. This certificate may be amended to include an authorization to house migrant workers at such time as the required written proof is forthcoming: *Provided*, That such proof as prescribed herein will have been submitted not more than sixty (60) days or less than thirty (30) days before actual use or occupancy of the housing facilities to the regional office which had issued the initial certificate.

§ 40.21 Expiration and renewal of Certificate of Registration.

A Certificate of Registration, once issued, may not be transferred or assigned and shall be effective for the remainder of the calendar year during which it was issued unless suspended or revoked. In any case in which an application for renewal of a valid Certificate of Registration submitted in accordance with the requirements of §§ 40.11 through 40.20 of these regulations has been made on or before November 30 of the year preceding the year for which renewal is sought, the authority to operate as a farm labor contractor under an existing certificate shall not expire until the renewal application shall have been finally determined by the Administrator.

§ 40.22 Replacement of Certificate of Registration.

If a Certificate of Registration is lost or destroyed, a duplicate Certificate of Registration may be obtained by the submission to the regional office that issued it or to any regional office of the Wage and Hour Division, Employment Standards Administration of a written statement explaining its loss or destruction, indicating where the original application was filed and requesting that a duplicate be issued.

EMPLOYEE IDENTIFICATION

§ 40.31 Filing of application for Farm Labor Contractor Employee Identification Card.

(a) Applications for an initial or renewal Farm Labor Contractor Employee Identification Card are available at, and may be filed in, any office of the Employment Service of the various States.

(b) An Employee Identification Card issued under Federal law is required whether or not registration, licensing or identification of such person is required under State law.

§ 40.32 Execution and Content of application for Farm Labor Contractor Employee Identification Card.

(a) The application shall set forth the information required thereon, shall be subscribed and sworn to by the applicant, and shall have attached the applicant's fingerprints on Form FD–258 as prescribed by the U.S. Department of Justice.

(b) If a full-time or regular employee of a farm labor contractor is to drive any vehicle for the transportation of migrant workers in connection with the business activities or operations of a farm labor contractor, such employee shall seek authorization for such activity by (1) submitting with the application for the initial Employee Identification Card a doctor's certificate on the prescribed form, and when applying for a renewal of such card with authorization to drive, a new completed doctor's certificate must be submitted if the previous doctor's certificate is more than 3 years old; and (2) submitting evidence of an appropriate license to operate such vehicle.

§ 40.33 Authorized use of Farm Labor Contractor Employee Identification Card.

(a) Any employee holding a valid Farm Labor Contractor Employee Identification Card described in § 40.4 of this part is authorized to engage in the activity or activities stated on such card solely on behalf of the employee's named employer who is a holder of a valid Certificate of Registration without obtaining a Certificate of Registration as a farm labor contractor in such employee's own name.

(b) The authorization provided by Section 4(b) of the Act and paragraph (a) of this section shall continue as long as the Farm Labor Contractor Employee Identification Card—

(1) Remains valid;

(2) Is in the immediate personal possession of such holder when engaging in any activity authorized thereby; and

(3) Is exhibited to any person with whom said holder undertakes to deal in such capacity.

§ 40.34 Replacement of Farm Labor Contractor Employee Identification Card, lost card or change of employment.

(a) If a Farm Labor Contractor Employee Identification Card is lost or destroyed, a duplicate card may be obtained by submitting to the regional office that issued it or to any regional office of the Wage and Hour Division, Employment Standards Administration, a written statement explaining its loss or destruction, indicating where the original application was filed, the name and number of the farm labor contractor by whom employed, and requesting that a duplicate be issued.

(b) A Farm Labor Contractor Employee Identification Card is valid only during the period in which the holder is a full-time or regular employee of the registered farm labor contractor named on the identification card. If, prior to the expiration of the identification card, the holder, through a change in employment, should become a full-time or regular employee of a different registered farm labor contractor, a replacement identification card which names the new employer may be obtained by submitting to the regional office that issued the original card or to any regional office of the Wage and Hour Division, Employment Standards Administration a written statement that includes the date of the change in employment status and the name, home address, current address and certificate registration number of the new employer.

(c) Any change of employment referred to in paragraph (b) of this section must be reported immediately.

§ 40.35 Expiration and renewal of Farm Labor Contractor Employee Identification Card.

(a) A Farm Labor Contractor Employee Identification Card, once issued, may not be transferred or assigned and shall expire on December 31 of the year of issuance, unless suspended or revoked prior thereto. The holder of such a card may request renewal of such card by executing and filing in any office of the Employment Service of the various States, the following—

(1) An application for renewal;

(2) Upon request, a completed U.S. Department of Justice Fingerprint Card, Form FD-258; and

(3) A prescribed doctor's certificate and appropriate operator's license in accordance with § 40.32(b), if such applicant is to be engaged as a driver for transporting migrant workers.

(b) In any case in which an application for renewal of an Employee Identification Card has been submitted in accordance with the requirements of paragraph (a) of this section on or before November 30 of the year preceding the year for which renewal is sought, the authority to operate as a full-time or regular employee of a holder of a Certificate of Registration shall not expire until the renewal application shall have been finally determined by the Administrator.

ACTION ON APPLICATIONS

§ 40.41 Office of filing, action.

Each application for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card filed at any of the offices designated in §§ 40.11 and 40.31 respectively shall be transmitted promptly to the appropriate regional office of the Wage and Hour Division, Employment Standards Administration.

§ 40.42 Issuance, refusal to issue, suspension, revocation or refusal to renew: Farm Labor Contractor Certificate of Registration or Farm Labor Contractor Employee Identification Card.

(a) The Administrator or authorized representative shall:

(1) Review each application transmitted by the offices of filing and determine whether such application is complete and properly executed.

(2) When appropriate, notify the applicant in writing of any incompleteness or error in execution of an application and return the application for correction and completion.

(3) Determine after appropriate investigation whether the applicant has complied with the requirements of the Act and this part and if appropriate issue a Certificate of Registration or a Farm Labor Contractor Employee Identification Card authorizing the performance of any or all activities permitted under the Act.

(b) The Administrator, upon notice and hearing in accordance with Subpart B of this part, may refuse to issue, may suspend, revoke or refuse to renew a Certificate of Registration or a Farm Labor Contractor Employee Identification Card when an investigation presents grounds as set forth in § 40.63 of this part for such action.

[41 FR 27318, July 2, 1976]

OBLIGATIONS AND PROHIBITED ACTS

§ 40.51 Obligations of a farm labor contractor.

The Act and these regulations imposes the following obligations on all farm labor contractors:

(a) The farm labor contractor shall obtain an appropriate Certificate of Registration before engaging in any activities of a farm labor contractor.

(b) The farm labor contractor shall provide the Secretary with a notice of each and every address change within 10 days after such change of address.

(c) Whenever a farm labor contractor obtains a vehicle or learns of the intended use of a vehicle for the transportation of migrant workers by said contractor and such vehicle or vehicles are under the contractor's ownership or control, said contractor shall, within 10 days after he obtains or learns of such intended use—

(1) Furnish a statement which shall identify each such vehicle;

(2) Provide written proof that each such vehicle conforms to all applicable Federal and State safety and health standards; and

(3) Furnish written proof of insurance or financial responsibility for such vehicle or vehicles to the office which originally had issued the Certificate of Registration.

(d) If the farm labor contractor is to drive a vehicle for the transportation of migrant workers, the contractor must seek advance authorization for such activity by (1) submitting on a prescribed form a doctor's certificate with the application for the initial Certificate of Registration and when applying for a renewal certificate with authorization to drive, a new completed doctor's certificate, if the previous doctor's certificate is more than 3 years old; and (2) submitting evidence of an appropriate license to operate such vehicle.

(e) If the farm labor contractor obtains housing facilities, or learns that certain facilities will be used for housing migrant workers and such facilities are under the ownership or control of the contractor, said contractor shall provide the documentation as prescribed in paragraph (a) of § 40.20 to the regional office which had issued the initial certificate. This document shall be submitted within 10 days after the contractor obtains or learns of the intended use of such real property and prior to its actual use.

(f) A registered farm labor contractor shall carry the Certificate of Registration at all times while engaging in farm labor contracting activities and shall exhibit the same to all persons with whom the contractor intends to deal as a farm labor contractor, including, but not limited to, workers, growers, processors, and State Employment Agency personnel, prior to so dealing.

(g) The farm labor contractor shall ascertain and disclose to the worker to the best of the contractor's knowledge and belief at the time the worker is recruited, the following information in writing, in a language and manner understandable to such worker on a form such as WH-416 (information on wages and working conditions)—

(1) The area of employment;

(2) The crops and operations on which the worker may be employed;

(3) The transportation, housing, and insurance to be provided the worker;

(4) The wage rates to be paid the worker;

(5) The charges to be made by the farm labor contractor for such contractor's services;

(6) The period of employment;

(7) The existence of a strike or other concerted stoppage, slowdown, or interruption of operations by employees at a place of contracted employment; and

(8) The existence of any arrangements between the farm labor contractor and any owner, proprietor, or agent of any commercial or retail establishment in the area of employment, under which the contractor is to receive a commission or any other benefit resulting from any sales provided to such establishment from the migrant workers.

(h) Upon arrival at a given place of employment, the farm labor contractor shall post in a conspicuous place a written statement of the terms and conditions of that employment in a language in which the workers are fluent and written in a manner understandable by such workers.

(i) In the event the contractor owns, manages, supervises, or otherwise controls the housing facilities, such person shall post in a conspicuous place the terms and conditions of occupancy in a language in which the worker is fluent and in a manner understandable by such worker.

(j) The farm labor contractor shall provide to each migrant worker engaged in agricultural employment with whom the contractor deals in a capacity as a farm labor contractor a statement of all sums paid to such contractor (including sums received on behalf of such migrant worker) on account of the labor of such migrant worker. The farm labor contractor shall additionally provide each such worker with an itemized statement showing all sums withheld by said contractor from the amount received on account of the labor of such worker, and the purpose for which such sums were withheld.

(k) In the event the farm labor contractor pays the migrant workers engaged in agricultural employment, either on behalf of such contractor or on behalf of another person, such contractor shall also keep payroll records which shall show for each worker in each workweek of the payroll period, name in full, home address, total earnings, itemized statement of all withholdings or deductions from earnings, net earnings, the hours worked each day, the total hours worked each workweek, and hourly rate of pay. If the worker is employed on a time basis other than hourly, this record shall also show the time period constituting the basis for payment. In addition, if the worker is employed on a piece rate basis, the payroll records shall show the number of units of work performed and the rate per unit.

(l) The farm labor contractor shall provide to the person to whom a migrant worker is furnished all information and records required to be kept by such contractor under paragraph (k) of this section and all information required to be provided to any migrant worker under paragraph (j) of this section.

(m) The farm labor contractor shall promptly pay or contribute when due to the individuals entitled thereto all moneys or other things of value entrusted to said farm labor contractor by any farm operator for such purposes.

(n) A farm labor contractor shall refrain from requiring any worker to purchase any goods solely from such farm labor contractor or any other person.

(o) The farm labor contractor shall refrain from violating or from taking any action in violation of Section 5(b) of the Act.

(p) A farm labor contractor shall refrain from recruiting, employing or utilizing with knowledge the services of any person who is an alien not lawfully admitted for permanent residence or who has not been authorized by the Attorney General to accept employment, and must evidence an affirmative showing of a *bona fide* inquiry of each prospective employee's status as a United States citizen or as a person lawfully authorized to work in the United States. Such affirmative showing will be deemed to be met by written documentation that reliance in good faith was based on any of the following:

(1) Acceptable evidence of United States citizenship—

(i) Birth certificate.

(ii) Certificate of citizenship.

(iii) Certificate of naturalization.

(iv) U.S. identification card (INS—Form I–179 or I–197).

(v) Passport issued by United States identifying person as citizen of United States.

(vi) Consular report of birth (State Department Form FS–240).

(2) INS—Form I–151, Alien Registration Receipt Card (green card), which is proof that the alien has been lawfully admitted to the United States for permanent residence and may accept any employment in this country without restriction. It is a green or blue-green wallet-sized laminated card, bearing a photograph of the alien and contains information concerning his alien registration number, date of admission as an immigrant, birth date and sex.

(3) INS—Form I–94 (with or without a passport)—

(i) INS—Form I–94 bearing an employment authorization consisting of the words "Employment Authorized."

(ii) INS—Form I–94 bearing the designation of H–2, as endorsed on the front or back of the form, authorizing a person to engage only in agricultural employment during the period of such person's authorized stay in the United States.

(q) A farm labor contractor is responsible for assuring that every full-time or regular employee employed by such Contractor has obtained either a Farm Labor Contractor Employee Identification Card or a Certificate of Registration, as required by the Act and these regulations, prior to such employee's engagement in any activity enumerated in Section 3(b) of the Act.

§ 40.52 Obligations of person holding a valid Farm Labor Contractor Employee Identification Card.

Any person holding a valid Farm Labor Contractor Employee Identification Card in accordance with the provisions of §§ 40.31 through 40.35 of this part is subject to and is required to comply with all of the provisions of the Act and these regulations to the same extent as if said person had been required to obtain a Certificate of Registration in such person's own name.

§ 40.53 Obligations of grower, processor, and other user.

Any person who is furnished any migrant worker by a farm labor contractor shall—

(a) Maintain all payroll records required to be kept by such person under Federal law;

(b) Obtain and maintain records containing the information required to be provided to such person by the farm labor contractor under Section 6(e) of the Act and § 40.51(1) of this part with respect to migrant workers paid by a farm labor contractor; and

(c) determine before engaging the services of a farm labor contractor to supply farm labor that the contractor possess a Certificate of Registration that is in full force and effect at the time he contracts with the farm labor contractor.

§ 40.54 Discrimination prohibited.

(a) Any person is deemed to have violated the Act if such person intimidates, threatens, restrains, coerces, blacklists, discharges, or in any manner discriminates against any migrant worker who for just cause has—

(1) filed a complaint with reference to this Act with the Secretary of Labor; or

(2) instituted or caused to be instituted any proceeding under or related to this Act; or

(3) has testified or is about to testify in any proceeding under or related to this Act; or

(4) has exercised on behalf of others any right or protection afforded by this Act to such persons.

(b) A complaint alleging such discriminatory conduct may be filed with the Secretary within 180 days after the happening of such unlawful acts.

VIOLATIONS AND SANCTIONS

§ 40.61 Report of violations, investigations, issuance of subpenas.

(a) Any person may report a violation of the Act or regulations of this part to the Administrator by advising any local office of the Employment Service of the various States, or any office of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or any other representative of the Administrator. The office or person receiving such a report shall refer it to the regional office of the Wage and Hour Division, Employment Standards Administration for the region in which the reported violation is alleged to have occurred and the Administrator shall direct that an appropriate investigation of any alleged violation shall be made.

(b) The Administrator, upon receipt of a complaint or upon his own initiative, may investigate and gather data respecting such case, may enter and inspect such places and records (and make copies thereof), may question persons being investigated or proceeded against, may issue subpenas requiring the attendance and testimony of witnesses or the production of any documentary or other evidence from any place in the United States at any designated place of hearing as may be appropriate, to determine whether a violation of this Act or this part has been committed. In connection with the foregoing, the said officer or his agent may administer oaths and affirmations, examine witnesses and receive evidence.

(c) In case of disobedience to a subpena, the aid of a Federal District Court which is authorized to issue an order requiring the person or business organization to obey such subpena may be invoked.

(d) Investigations are to be conducted in a manner which protects the confidentiality of any complainant or other person who provides information on a confidential basis, in accordance with Part 70 of this title.

§ 40.62 Sanctions.

(a) Violations of the Act or regulations thereunder may result in the imposition of civil injunctive relief or, in the case of willful and knowing violations by a farm labor contractor or employee thereof, the imposition of criminal sanctions. In addition, civil money penalties of not more than $1,000 for each violation may be assessed administratively. Further, administrative action may be taken to suspend, revoke, refuse to issue or renew a Certificate of Registration or Employee Identification Card, and to deny the facilities and services afforded by the Wagner-Peyser Act. The taking of any one of the above actions shall not be a bar to the concurrent taking of any other action enumerated in this section.

(b) If, upon the receipt of a complaint in which a worker has alleged discriminatory action of a type specified in section 13(a) of the Act and § 40.54 of this part, the ensuing investigation results in a determination that such discriminatory conduct had been committed, an action shall be instituted in an appropriate Federal District Court to restrain such violation and to seek such other relief as may be appropriate, including rehiring or reinstatement of the worker, with backpay, or damages.

§ 40.63 Certificates of Registration and Farm Labor Contractor Employee Identification Cards—grounds for revocation or suspension or refusal to issue or to renew.

Certificates of Registration and Farm Labor Contractor Employee Identification Cards may be revoked or suspended, or issuance or renewal thereof refused, if the applicant or registrant—

(a) Fails or refuses to comply with any provisions of § 40.51 of this part;

(b) Knowingly has made any misrepresentations or false statements in an application for a Certificate of Registration or for Farm Labor Contractor Identification Card or any renewal thereof;

(c) Knowingly has given false or misleading information to migrant workers concerning the terms, conditions, or existence of agricultural employment;

(d) Has failed, without justification, to perform agreements entered into or arrangements with farm operators;

(e) Has failed, without justification, to comply with the terms of any working arrangements that the applicant or registrant has made with migrant workers;

(f) Has failed to show financial responsibility satisfactory to the Administrator or has failed to keep in effect a policy of insurance as required by Section 5(a)(2) of the Act;

(g) Has recruited, employed or utilized, with knowledge, the services of any person, who is an alien not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment;

(h) Has been convicted of any crime under State or Federal law relating to gambling or to the sale, distribution, or possession of alcoholic liquors in connection with or incident to his activities as a farm labor contractor; or has been convicted of any crime under State or Federal law involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, or peonage; where the date of the judgment of conviction of any crime as specified herein has been entered with a period of 5 years preceding the action of the Secretary under this paragraph;

(i) Has failed to comply with rules and regulations as required by §§ 40.19 and 40.20 of this part;

(j) Knowingly employs or continues to employ any person, to whom subsection (b) of Section 4 of the Act applies, who has taken any action, except for that listed in paragraph (f) of this section, which could be used by the Administrator under this section to refuse to issue a Certificate of Registration;

(k) Is not in fact the real party in interest in any such application for a Certificate of Registration and that the real party in interest is a person, firm, partnership, association, or corporation who previously has been denied a Certificate of Registration, has had a Certificate of Registration suspended or revoked, or who does not presently qualify for a Certificate of Registration;

(l) Has failed to furnish, or refused to allow a designated representative of the Administrator to obtain appropriate information necessary to make a determination of eligibility for a Certificate of Registration or a Farm Labor Contractor Employee Identification Card as provided by Sections 5(b) and 7 of the Act;

(m) Has used a vehicle for the transportation of migrant workers, or has used real property for the housing of migrant workers while such vehicle or real property failed to conform to all applicable Federal and State safety and health standards, to the extent any such vehicle or real property has come within the ownership or control of such farm labor contractor;

(n) Has intimidated, threatened, restrained, coerced, blacklisted, discharged, or in any manner discriminated against any migrant worker who has filed a complaint or instituted or caused to be instituted any proceeding or has exercised any right or protection afforded by this Act, whether such action is on behalf of said worker or on behalf of others; or

(o) Has failed to comply with any of the provisions of this Act or any regulations issued thereunder.

§ 40.64 Denial of facilities and services of Wagner-Peyser Act.

(a)(1) Upon determination by the Secretary that a person has knowingly engaged the services of a farm labor contractor who did not possess a valid Certificate of Registraiton as required by the Act, such person may be denied the facilities and services authorized by the Wagner-Peyser Act for a period of up to 3 years.

(2) Evidence that a farm labor contractor possesses a Certificate of Registration that is in full force and effect may consist of—

(i) The Certificate of Registration submitted by the farm labor contractor; or

(ii) A confirmation of such fact obtained from the Secretary's public central registry of all persons issued Certificates of Registration.

(3) If an investigation results in a finding of violation, the Secretary shall notify any person charged with such violation of any proposal to deny such person the facilities and services available under the Wagner-Peyser Act, and of such person's right to request a hearing, as prescribed in Subpart B of this part.

(b) If a farm labor contractor fails or refuses to exhibit a valid Certificate of Registration to all persons with whom he intends to deal in his capacity as a farm labor contractor prior to so dealing, as required by Section 6(a) of the Act and § 40.51(f) of this part, the contractor shall be denied the facilities and services authorized by the Wagner-Peyser Act and shall also be subject to such penalties as are provided in the Act or in this part.

§ 40.65 Civil money and other administrative penalties.

(a) Where violations by any persons of the Act or any regulations promulgated thereunder have been disclosed and have resulted in proposals to refuse renewal or issuance or to suspend or to revoke a Certificate of Registration or a Farm Labor Contractor Employee Identification Card or to assess a civil money penalty or to deny persons the services and facilities of the Wagner-Peyser Act, any one so charged is entitled to an opportunity for a proceeding before an administrative law judge as described in Subpart B of this part.

(b) Any assessment of a civil money penalty shall be based on the available evidence and shall take into consideration among others, one or more of the following factors:

(1) Previous history of violation or violations.

(2) The number of migrant workers affected by the violation or violations.

(3) The gravity of the violation or violations.

(4) Efforts made in good faith to comply with the Act.

(5) Explanation of person charged with the violation or violations.

(6) Assurances of future compliance, taking into account the public health, interest or safety.

(7) Financial gain on the part of the violator or financial losses to worker or workers.

§ 40.66 Waiver of rights.

Any agreement by an employee purporting to waive or modify any rights inuring to said person under this Act or rules promulgated thereunder shall be void as contrary to public policy, except a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or rules promulgated thereunder.

Subpart B—Administrative Proceedings

GENERAL

§ 40.101 Establishment of procedures and rules of practice.

This subpart codifies, amends, and establishes the procedures and rules of practice necessary for the enforcement of the Act.

§ 40.102 Applicability of procedures and rules.

(a) The procedures and rules contained herein establish the administrative processes necessary for a determination:

(1) To refuse to issue or renew, or to suspend or revoke, either a "Certificate of Registration" or a "Farm Labor Contractor Employee Identification Card";

(2) To impose a civil money penalty for any violation of the Act or the provisions of Subpart A of these regulations;

(3) To deny the facilities and services authorized by the Wagner-Peyser Act; and

(4) To the filing of a complaint alleging discriminatory conduct.

(b) The procedures and rules contained herein also summarize the methods to be utilized in the assessment, collection, and recovery of any civil money penalties administratively assessed under the Act and these regulations.

(c) Finally, the procedures and rules contained herein specify the administrative responsibility resulting from section 5(a)(5) of the Act relating to the service of summons upon the Secretary on behalf of farm labor contractors.

PROCEDURES RELATING TO HEARINGS ON REFUSAL TO ISSUE OR RENEW, OR TO SUSPEND OR REVOKE, A CERTIFICATE OF REGISTRATION OR A FARM LABOR CONTRACTOR EMPLOYEE IDENTIFICATION CARD

§ 40.111 Refusal to issue or renew, or to suspend or revoke—written notice required.

(a) Whenever the Administrator finds and determines that a Certificate of Registration or a Farm Labor Contractor Employee Identification Card should be suspended or revoked or that issuance or renewal thereof should be refused, the applicant or holder of the Certificate of Registration or identification card shall be notified in writing of such determination.

(b) In cases involving a determination relating to a farm labor contractor, written notice shall also be given to every holder of an Employee Identification Card which was issued or applied for on behalf of such farm labor contractor.

(c) In cases involving a determination relating to a Farm Labor Contractor Employee Identification Card, written notice shall also be given to the holder of the Certificate of Registration under which the identification card was issued or applied for.

§ 40.112 Contents of notice.

The notice referred to in § 40.111 shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefor.

(b) Apprise the applicant or holder of the right to request a hearing on the determination to refuse to issue, or renew or to suspend or revoke, a Certificate of Registration or a Farm Labor Contractor Employee Identification Card.

(c) Apprise the applicant or holder of the time and method for making such request, and the procedures relating thereto, in accordance with the provisions of § 40.113.

(d) Inform the applicant or holder that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

§ 40.113 Request for hearing.

(a) Any applicant or holder desiring to request an administrative hearing on the determination to refuse to issue or renew, or to suspend or revoke, a Certificate of Registration or a Farm Labor Contractor Employee Identification Card shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, no later than twenty (20) days after the service of the notice referred to in § 40.111.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected party's protection, if this notice is by mail, such notice should be by certified mail.

PROCEDURES RELATING TO HEARINGS ON CIVIL MONEY PENALTIES

§ 40.121 Assessment of civil money penalty, written notice required.

Whenever the Administrator finds that any person has violated any provision of the Act or these regulations and has determined that a civil money penalty shall be assessed, a written notification of such determination shall be served upon the person against whom such penalty has been assessed.

§ 40.122 Contents of notice.

The notice referred to in § 40.121 shall:

(a) Set forth the determination of the Administrator and shall include:

(1) A description of each violation for which a civil money penalty has been assessed; and

(2) The amount of civil money penalty assessed for each violation identified in subparagraph (1) above.

(b) Apprise the affected person or persons of the right to request a hearing on the determination of the assessment of the civil money penalty or penalties referred to in § 40.121.

(c) Inform the affected person or persons that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

(d) Apprise the affected person or persons of the time and method for making such request, and the procedures relating thereto, in accordance with the provisions of § 40.123.

§ 40.123 Request for hearing.

(a) Any person desiring to request an administrative hearing on the determination to assess civil money penalties shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, no later than thirty (30) days after the service of the notice referred to in § 40.121.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected person's protection, if this notice is by mail, such notice should be by certified mail.

§ 40.124 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Secretary or in a final judgment issued by a Federal District Court, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person charged with such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Administrator, either in Washington, D.C., or to the Regional Wage and Hour Division Office located in the area in which the violations occurred.

PROCEDURES RELATING TO HEARINGS FOR DENIAL OF WAGNER-PEYSER FACILITIES

§ 40.131 Denial of facilities and services authorized by Wagner-Peyser Act.

Whenever the Administrator finds and determines that any person should be denied the facilities and services authorized by the Wagner-Peyser Act for violations of the Farm Labor Contractor Registration Act (see § 40.64 of Subpart A) or these regulations, that person shall be notified in writing of such determination and the length of such denial.

§ 40.132 Contents of notice.

The notice referred to in § 40.131 shall:

(a) Set forth the determination of the Administrator and the reason or reasons therefor.

(b) Apprise the affected person or persons of the right to request a hearing on the determination to deny the Wagner-Peyser Act facilities and services referred to in § 40.131.

(c) Inform the affected person or persons that in the absence of a request for a hearing, the determination of the Administrator shall become the final and unappealable order of the Secretary.

(d) Apprise the affected person or persons of the time and method for making such request, and the procedures relating thereto, in accordance with the provisions of § 40.133.

§ 40.133 Request for hearing.

(a) Any person desiring to request an administrative hearing on the determination referred to in § 40.131 shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, no later than twenty (20) days after the service of the notice referred to in § 40.131.

(b) The request for such hearing shall be in writing, signed by the person making the request or by an authorized representative of such person, and delivered in person or by mail to the above address, within the time set forth in paragraph (a) of this section. For the affected party's protection, if this notice is by mail, such notice should be by certified mail.

§ 40.134 Automatic denial of facilities and services authorized by Wagner-Peyser Act—duration.

In accordance with section 6(a) of the Act, the facilities and services authorized by the Wagner-Peyser Act are denied to any farm labor contractor or holder of a Farm Labor Contractor Employee Identification Card issued under this Act, during the period and whenever such person fails to exhibit a valid Certificate of Registration or Employee Identification Card to a representative of the employment service.

PROCEDURES RELATING TO THE FILING OF A COMPLAINT ALLEGING DISCRIMINATORY CONDUCT

§ 40.141 Discriminatory conduct—complaint.

Any worker who believes that he or she has been discriminated against within the meaning of section 13 of the Act and § 40.54, may file a complaint with the Secretary within one-hundred and eighty (180) days of such discriminatory act.

FORM AND TIME OF REQUEST FOR HEARING

§ 40.151 Form of request.

No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(a) Be typewritten or legibly written;

(b) Be directed to the issue or issues stated in the notice of determination giving rise to such request;

(c) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(d) Be signed by the person making the request or by an authorized representative of such person; and

(e) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

§ 40.152 Time for making request.

Any request for a hearing pursuant to these regulations shall be made within the time prescribed by §§ 40.113, or 40.123, or 40.133, of this subpart, as may be appropriate to the matter in controversy, except that if such request is filed pursuant to a notice involving a combination of any of the foregoing, any one of which requires thirty (30) days notice, the time for such notice shall be thirty (30) days after issuance of such notice of determination.

PROCEDURES RELATING TO SUBSTITUTE SERVICE

§ 40.161 Change of address.

(a) Pursuant to sections 5(a)(5) and 5(d) of the Act and §§ 40.13, 40.51(b), and 40.52, every holder of a certificate or identification card shall notify the Administrator within ten (10) days after each and every change of address.

(b) The notification required in paragraph (a) shall be in writing, by certified mail, and addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(c) Such change of address shall be deemed effective upon receipt by the Administrator, unless a later date is specified in the notice.

§ 40.162 Substituted service.

(a) Pursuant to section 5(a)(5) of the Act and § 40.13, the Secretary shall accept service of summons for any person issued and holding a valid Certificate of Registration or a valid Employee Identification Card whenever such person has departed from the jurisdiction in which the action giving rise to the service of summons was commenced or whenever such person has become otherwise unavailable to accept service.

(b) Acceptance of service of summons referred to in paragraph (a) shall be under such terms and conditions as are set by the court in which such action has been commenced.

(c) To be effective, such service shall be made by delivery personally or by certified mail to the Administrator of the Wage and Hour Division, either in Washington, D.C., or to the Office of the Administrator, located in the area in which the action has been commenced.

§ 40.163 Responsibility of Secretary for service.

Upon receipt of any substituted service, as described in § 40.162, the same shall be forwarded by certified mail to the last known address furnished by the person for whom service is accepted. Such mailing shall complete the Secretary's responsibility in connection with the substituted service requirement of the Act.

RULES OF PRACTICE

GENERAL

§ 40.201 Commencement of proceeding.

Each administrative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely "request for hearing" filed in accordance with §§ 40.113, 40.123, 40.133, or 40.152.

§ 40.202 Designation of record.

(a) Each administrative proceeding instituted under the Act and these regulations shall be identified of record by a number preceded by the letters "FLCRA" and followed by one or more of the following four designations:

(1) Proceedings involving the "refusal to issue or renew, or to suspend, or revoke, a Certificate of Registration or an Employee Identification Card" provided for in §§ 40.111 through 40.113 shall be designated as "R."

(2) Proceedings involving the "assessment of civil money penalties" provided for in §§ 40.121 through 40.124 shall be designated as "P."

(3) Proceedings involving the "denial of facilities and services authorized by the Wagner-Peyser Act" provided for in §§ 40.131 through 40.133 shall be designated as "W."

(b) Proceedings involving a combination of the actions designated in (a) (1) through (a) (3) of this section shall carry each and every such designation as may be appropriate.

(c) The number, letters, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

§ 40.203 Caption of proceeding.

(a) Each administrative proceeding instituted under the Act and these regulations shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In The Matter of________________________, respondent.

(b) For the purposes of such administrative proceeding the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

REFERRAL FOR HEARING

§ 40.210 Referral to Administrative Law Judge.

(a) Upon timely receipt of a request for a hearing filed pursuant to and in accordance with §§ 40.113, 40.123, 40.133, or 40.152, the Administrator, by Order of Reference, shall promptly refer an authenticated copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a final determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment as may be permitted under these regulations.

(b) A copy of the Order of Reference referred to herein, together with a copy of these regulations, shall be served by counsel for the Administrator upon the person requesting the hearing, in the manner provided in § 40.220.

(c) The Chief Administrative Law Judge, upon receipt of the Order of Reference, shall promptly designate an Administrative Law Judge to conduct the proceeding, which shall be in accordance with section 554 of Title 5, United States Code, and the provisions of this part.

§ 40.211 Notice of hearing.

The Administrative Law Judge to whom the matter is referred shall, within ten (10) days following such referral, notify the parties by certified mail of a day, time, and place set for hearing thereon or for a prehearing conference to be held as provided in § 40.237, or both. No date earlier than fifteen (15) days after the date of such notice shall be set for such hearing or conference, except by agreement of the parties. Service of such notice shall be made upon the parties as provided in § 40.220.

§ 40.212 Supplemental pleadings.

If upon review of the notice of administrative determination or the request for hearing thereon, it appears to either party that such document, as originally drafted, requires supplementation in order to clarify the issues for a hearing thereon, an amended notice of administrative determination may be filed by the Secretary or an amended response thereto may be filed by respondent, as the case may be. Such supplemental pleading shall be filed with the Chief Administrative Law Judge, with proof of service upon the opposing party, at least ten (10) days prior to the date set for hearing or for a prehearing conference by the Administrative Law Judge before whom the matter is pending, unless the time for filing such document is extended by the judge. If an amended notice of administrative determination is filed by the Secretary, the respondent shall be entitled to file with the Chief Administrative Law Judge an amended response in response within five (5) days after service upon the respondent of such amended notice. No response is required, but if filed, it must be signed either by the person answering or responding or by the representative of such person.

SERVICE OF PLEADINGS AND DOCUMENTS

§ 40.220 Service of documents—manner of service.

(a) *General.* Any pleading, notice, or other document required by this Subpart B to be filed or served on any person shall be filed or served either personally upon such person or by mail to the last known address of such person. If done by certified mail, filing or service is complete upon mailing. If done by regular mail, filing or service is complete upon receipt by addressee.

(b) *Upon parties.* Service of any pleading, notice, or other document by mail upon an applicant for or a holder of a Certificate of Registration or a Farm Labor Contractor Employee Identification Card shall be made at the address designated either on such applicant's or holder's most recent application, or on any subsequent written communication to the Administrator as provided in §§ 40.151 or 40.161.

(1) Service upon any other party to a proceeding under the Act or these regulations of a pleading or document shall also be made by delivering a copy or mailing a copy to the last known address. When any party is represented by an attorney, service shall be made upon the attorney.

(c) *Additional time for service by mail.* Whenever a party to any proceeding under this part has a right or is required to take any action within a prescribed period after the service of a pleading, notice, or other document upon such party, and the pleading, notice, or document is served upon said party by certified mail, five (5) days shall be added to the prescribed period.

§ 40.221 Service upon the Department of Labor—number of copies.

An original and four copies of all pleadings and other documents required for any administrative proceeding provided herein shall be filed with the Department of Labor, the original and a copy thereof to the Chief Administrative Law Judge, a copy to the Administrative Law Judge assigned to the proceeding, a copy to the Associate Solicitor for General Legal Services, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, and a copy to the attorney representing the Department in the proceeding.

§ 40.222 Proof of service.

The filing of a certificate by the person serving the pleading or other document by personal delivery or by mailing, setting forth the manner of service, shall be proof thereof.

§ 40.223 Computation of time.

(a) Saturdays, Sundays, and Federal legal holidays shall be included in computing the time allowed for filing any pleading, notice, or document under this part, but when the filing time expires on such a day, the period shall be extended to include the next following day which is not a Saturday, Sunday, or a Federal legal holiday.

(b) In computing any period of time prescribed or permitted by this part, the day of the act, event, notice, or default from which the designated period of time begins to run shall not be included.

PROCEDURES BEFORE ADMINISTRATIVE LAW JUDGE, GENERALLY

§ 40.230 Authority of Administrative Law Judge.

(a) *General powers.* In any proceeding under this part, the Administrative Law Judge shall have all powers necessary to the conduct of fair and impartial hearings, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpenas upon proper applications as provided in § 40.234;

(3) To rule upon offers of proof and receive relevant evidence;

(4) To take or cause to be taken depositions and to determine their scope;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

(6) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) To consider and rule upon procedural requests;

(8) To make and file decisions in conformity with this part;

(9) To take any action authorized by the rules in this part or in conformance with the Administrative Procedure Act;

(10) To exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, such powers vested in the Secretary by Section 7 of the Act as are necessary and appropriate therefor; and

(11) To take any action authorized by the rules of civil procedure for the United States District Court, issued and from time to time amended pursuant to 28 U.S.C. 2072, as deemed necessary and appropriate, unless otherwise proscribed herein.

(b) *Consultation.* The Administrative Law Judge shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(c) *Disqualification.* (1) When an Administrative Law Judge deems himself/herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on the record directed to the Chief Administrative Law Judge.

(2) Whenever any party shall deem the Administrative Law Judge for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with the Chief Administrative Law Judge a motion to disqualify and remove such Administrative Law Judge. The motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. The Chief Administrative Law Judge shall rule upon the motion, and such ruling shall be final.

(3) In the event of disqualification of an Administrative Law Judge as provided in paragraph (c)(1) or (c)(2) of this section, the Chief Administrative Law Judge shall refer the matter to another Administrative Law Judge for further proceedings.

§ 40.231 Appearances; representation of parties.

The Associate Solicitor for General Legal Services and other counsel, as designated, shall represent the Secretary in any proceeding under these regulations. Respondents shall have the right to appear by or with counsel of their choice, who shall qualify for such representation as provided in 5 U.S.C. 500(b). If not represented by counsel, respondents may appear in person or through authorized agents and may submit necessary documents with their own signatures.

§ 40.232 Pleadings allowed.

All matters other than the notice of administrative determination and a request for hearing shall be presented by motion.

§ 40.233 Motions and requests.

Motions or requests shall be in writing, filed with the Chief Administrative Law Judge, and copies served upon the other parties to the proceeding, except that motions or requests made during the course of any hearing or appearance before the Administrative Law Judge shall be filed with such judge or shall be stated orally and made part of the transcript. Each motion or request shall state the particular order, ruling, or action desired, and the grounds therefor. The Administrative Law Judge is authorized to rule upon all motions or requests filed or made prior to the filing of the judge's decision as provided in § 40.262.

§ 40.234 Subpenas.

All applications for subpenas *ad testificandum* and subpenas *duces tecum* shall be made in writing to the Administrative Law Judge. Applications for subpenas *duces tecum* shall specify as exactly as possible the documents to be produced, showing their general relevancy and reasonable scope.

§ 40.235 Witnesses and fees.

(a) The Administrative Law Judge, either at the request of the parties or upon the judge's own motion, may request persons to appear and testify as witnesses, where such action is deemed necessary to serve the purposes of the hearing.

(b) Witnesses subpenaed by any party or by the Administrative Law Judge shall be paid the same fees and mileage as are paid for like services in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

§ 40.236 Depositions.

(a) *When, how, and by whom taken.* For good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written questions before any person designated by the Administrative Law Judge and having power to administer oaths.

(b) *Application.* Any party desiring to take the deposition of a witness shall make application in writing to the Administrative Law Judge, setting forth the reasons why such deposition should be taken; the time and place it is to be taken; the name and address of the person before whom the deposition is to be taken; the name and address of each witness from whom a deposition is to be taken; and the subject matter concerning which each such witness is expected to testify.

(c) *Notice.* Such notice as the Administrative Law Judge shall order shall be given for the taking of a deposition, but this shall not be less than five (5) days' written notice when the deposition is to be taken within the United States and not less than twenty (20) days' written notice when the deposition is to be taken elsewhere.

(d) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and the adverse party shall have the right to cross-examine. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing; read by or to, and subscribed by the witness; and certified by the person administering the oath. Thereafter, such officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by certified mail to the Administrative Law Judge. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and which would have been valid if the witness were personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present or represented at the taking of the deposition or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of hearing.

§ 40.237 Prehearing conferences.

(a) Upon motion of either party, or when deemed appropriate by the Administrative Law Judge, the judge may direct the parties or their authorized representatives to meet with the judge for a conference to consider:

(1) Simplification or clarification of the issues;

(2) Necessity or desirability of amendments to pleadings for purposes of clarification, simplification, or limitations;

(3) Stipulations, admissions of fact, and admissions of contents and authenticity of documents;

(4) Limitation of the number of witnesses, including expert witnesses; and

(5) Such other matters as may tend to expedite the disposition of the proceeding.

(b) The Administrative Law Judge shall issue a prehearing order showing the matters disposed of by order and by agreement in such pretrial conferences. The subsequent course of the proceeding shall be controlled by such order.

§ 40.238 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be in the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of anv further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representative or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

HEARINGS

§ 40.251 Hearing procedures generally.

(a) Pursuant to notice given as provided in § 40.211, the designated Administrative Law Judge shall hold such hearings, as provided in this part, as are necessary for determination of the issue or issues submitted for decision, exercising the powers set forth in § 40.230 and conducting the proceeding in accordance with the provisions of 5 U.S.C. 554. In any such hearing, the burden of supporting the Administrator's determination shall be upon the Secretary. Except as may be determined otherwise by the Administrative Law Judge, counsel for the Secretary shall proceed first at the hearing. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge.

(b) For good cause shown, the Administrative Law Judge may permit any interested party or person to intervene at a hearing. A petition to intervene shall be in writing and shall state briefly and with particularity the petitioner's relationship to and interest in the matters involved in the proceedings and the nature of the presentation to be made.

(c) If any party to the proceeding, after being properly served with notice of the hearing, should fail to appear at the hearing, the matter may be set for further hearing upon notice to all parties, but a party who is present shall first have an election to present such party's evidence in whole or such portion thereof sufficient to make a *prima facie* case, in which event the Administrative Law Judge may make a decision without further hearing. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Administrative Law Judge's decision.

(d) Contemptuous conduct at any hearing shall be grounds for exclusion from the hearing.

§ 40.252 Evidence at the hearing.

(a) *In general.* The testimony of witnesses shall be upon oath or affirmation administered by the Administrative Law Judge and shall be subject to such cross-examination as may be required for a full and true disclosure of the facts. The Administrative Law Judge shall exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(b) *Objections.* A party who objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination or the failure to limit such scope, shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. A formal exception to an adverse ruling is not required.

(c) *Failure or refusal of witness to appear or answer.* The failure or refusal of a witness to appear at any hearing or to answer any question which has been ruled to be proper shall be grounds for the action provided in sections 49 and 50 of Title 15, United States Code, pursuant to the provisions of section 7 of the Act, and, in the discretion of the Administrative Law Judge, for striking out all or part of the testimony which may have been given by such witness.

§ 40.253 Official notice.

Official notice may be taken of any material fact, not appearing in evidence in the record, which is among the traditional matters of judicial notice or which concerns matters as to which the Department, by reason of its functions, is presumed to be expert: *Provided,* That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary.

§ 40.254 Transcripts.

Hearings shall be stenographically reported.

POST-HEARING PROCEDURES

§ 40.261 Proposals by the parties.

At the conclusion of the hearing, the Administrative Law Judge shall afford any party a reasonable opportunity, but not less than fifteen (15) days, upon request, to file with such officer proposed findings of fact, conclusions of law, and a proposed order together with a supporting brief. There may be included statements of the reasons for any such proposed findings of fact, conclusions of law, and the proposed order, including a reference to the portions of the record and to the authorities relied upon in support of each proposal. Such proposals shall be accompanied by a certification that service of the proposals has been made upon all other parties.

§ 40.262 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers provided for in § 40.231, and the judge's decision in the matter shall become the final decision in the administrative process, as provided in the Act. The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue of fact, law, or discretion presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator. The reason or reasons for such order shall be stated in the decision.

(b) The Administrative Law Judge shall transmit to the Chief Administrative Law Judge the entire record including the original of the decision. The Chief Administrative Law Judge shall serve copies of the decision on each of the parties.

(c) The decision when served shall constitute the final order of the Secretary.

(d) Upon service of this decision, the administrative remedies available to the parties have been exhausted.

RECORD

§ 40.271 Retention of official record.

(a) The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

(b) The official record of every completed administrative proceeding provided by this part, other than the record of an administrative hearing, shall be maintained and filed under the custody and control of the Administrator.

§ 40.272 Certification of official record.

(a) Upon timely receipt of either a notice pursuant to section 9(b)(3) of the Act or a petition pursuant to Section 11 of the Act, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings, under the custody and control of the Chief Administrative Law Judge. This shall include the record upon which any penalty may have been imposed or any order complained of which may have been entered.

(b) Upon the timely receipt of a petition under Section 11 of the Act, in any action in which no administrative hearing was held, the Administrator shall file with the appropriate United States District Court a full, true, and correct copy of any transcript of proceedings or record upon which the order complained of was entered.

CATHOLIC DIOCESE OF RICHMOND
OFFICE OF SOCIAL DEVELOPMENT

MR. JOHN NIENSTADT
REGIONAL DIRECTOR

TIDEWATER REGION
232 CHAPEL STREET
NORFOLK, VIRGINIA 23504
TELEPHONE 622-0287

MAR 3 1978

February 28, 1978

Honorable Ike Andrews
Room 228
Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Andrews,

Permitt me to thank you, Congressman Goodling and the subcommittee staff for the superior manner in which the FLCRA hearings were conducted last week. It was my pleasure and a most informative experience, to have been present. I particularly appreciated your own Socratic, questioning approach to much of the testimony of both sides. This compelled an elaboration of perspectives which was both interesting and educational (and perhaps embarrassing for some who hadn't really thought through their own position). Likewise I was greatful for your personal comments regarding the need for farmworker safety and adequate insurance coverage while being transported. Frankly I was not sure of your position on these matters during the Raleigh hearings.

I'll not reiterate my own position on each of the seven bills. I of course in general oppose each and all of them (and anything else which tends to reduce the protections accorded farmworkers).

I would however, depart from the position taken by most pro-farmworker organizations by stating that I would strongly support legislation which encouraged a vast expansion of day haul vis a vis migrancy, a goal which I gather several of the grower spokespersons present at the hearings might also endorse.

My perspective here is that the system of migrancy as presently practiced is highly inefficient. It is unduly expensive to growers and to migrants as well as in its social costs to the general public, it is inherently pregnant with potential for abuse by labor contractors and others. Finally its innate deficiencies are in most respects irremediable without disproportionate expenditures, eg., in housing, health care, education, enforcement of FLCRA etc, etc.

Consequently I would argue that public policies ought be enacted which minimize the number of farmworkers who migrate within the stream(s) and which maximize the number of those who work on a day haul basis. Such an approach would not of course be free of problems, nor I suspect, of abuses by the unscrupulous. It would however, in my opinion, be equally as efficient from the growers prospective, considerable less expensive especially as regards the human costs and social costs; would be vastly less prone to abuse and much more easily policed than the migratory system presently so widely employed (and widely deplored).

I recognize that many pro-farmworker organizations oppose my position. This, I submitt, because they have vested interests in perpetuating the present evil (a strong word) system because the service(s) they and their agencies deliver to migrants (eg., health care, education, day care, etc.) would be delivered by others or not needed at all were migrancy greatly reduced or eliminated.

Nor am I certain that many growers would support my stance, even though many growers presently conduct highly satisfactory day haul operations. But, I honestly believe that most migrant using growers recognize some of the undesirable aspects of migrancy and could be persuaded to adopt a suitable alternative which acheived their goals were one available.

In any event Congressman Andrews, I honestly believe that serious consideration ought be given by the Congress and indeed by the administration to significantly altering the present system which has proven so inadequate and dysfunctional. I would be happy to discuss such prospects with your committee and its staff as well as any other persons you might consider appropiate. In the interim I sincerely hope your subcommittee will recommend aganist each of the pending bills.

Again my sincere thanks to you, sir.

Peace,

Jack Nienstadt

Jack Nienstadt
Director, Social Ministry

JJN/set

National Council of La Raza

Raul Yzaguirre
National Director

National Office
1725 Eye Street, N.W.
Suite 210
Washington, D.C. 20006
(202) 659-1251

March 20, 1978

The Honorable Ike Andrews, Chairman
Subcommittee on Economic Opportunity
Committee on Education and Labor
House of Representatives
United States Congress
Cannon House Office Bldg., Room 320
Washington, D.C. 20515

Dear Sir:

I urge you to reject all attempts to weaken the Farm Labor Contractor Registration Act.

Bills being considered soon by the Subcommittee on Economic Opportunity threaten to severely damage the hard-won safeguards contained in the current Act. HR 7892, HR 8249, HR 8233, HR 8234, HR 8894, HR 10053 and HR 10631 all threaten the welfare of migratory and seasonal agricultural workers.

As you know, migratory and seasonal agricultural workers are the poorest of the working poor in the United States. They are extremely vulnerable to exploitation and abuse by employers.

The Farm Labor Contractor Registration Act is an important source of protection. It would be extremely unjust of the Subcommittee accept weakening amendments.

I urge you to vote against the bills listed above, and to oppose any other similar measures.

Yours very truly,

Raul Yzaguirre
National Director

RY/lo

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MAR 2

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AFFAIRS
HARRISBURG
17120

360 Scranton State Office Building
100 Lackawanna Avenue
Scranton, Pennsylvania 18503

March 16, 1978

The Honorable Ike Andrews
Chairman
House Sub-Committee on
Economic Opportunity
320 Cannon Building
Washington, D.C. 20551

Dear Representative Andrews:

I am writing to you in my capacity as Executive Secretary of the Governor's Interdepartmental Council on Migrant and Seasonal Farmworkers. It has come to our attention that hearings were held on February 22 and 23 in Washington, D.C., regarding proposed amendments to the Farm Labor Contractor Registration Act.

I would like to go on record as opposing any or all of the proposed amendments to the 1974 Act that would serve to reduce present coverage for farmworkers.

The proposed amendment would:

1. Exempt many day-haul contract from coverage under the Act.
2. Exempt farm labor contractors operating under the guise of a growers association wherever the association is non-profit, for income tax purposes.
3. Extend the existing exemption for a recruitment "personally" by a grower to recruitment by an agri-business corporation.
4. Exempt any crew leader deemed to be a regular or full-time employee of a grower.
5. Define the "fee" which triggers coverage as consideration "in the excess of the actual costs of providing such services".

It is my feeling that farmworkers are, in many cases, already inadequately protected by present labor law and that amendments as currently presently considered would only serve to widen existing loop-holes. I, therefore, urge that you not support any efforts that would weaken existing legislation.

Sincerely,

Victor R. H. Yarnell

Victor R. H. Yarnell
Executive Secretary

VRHY:mb

MAR 22 1978

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JOAN OF ARC COMPANY
Canners of Fine Foods Since 1878

2231 W. Altorfer Drive
Peoria, Illinois 61614
Telephone 309/692-1020

March 20, 1978

MAR 22 1978

Hon. Ike F. Andrews
House of Representatives
Room 228
Cannon House Office Building
Washington, D.C. 20515

Mr. Andrews:

Joan of Arc Company currently employs migrant workers in Illinois, Wisconsin and Indiana. This work force assists Joan of Arc during seasonal asparagus and sweet corn harvests.

We have always been concerned with the welfare of all employees, regular and migrant, and because of this concern have run afoul of the U.S. Department of Labor in reference to the Farm Labor Contractor Act.

During an inspection on August 23, 1977, Joan of Arc Company was cited for:

1. Failure to register
2. Disclosure to workers
3. Statement of Amounts Contractor Received Provided to Workers
4. Hiring unregistered FLCE
5. Failure to exhibit proper certificates

These citations and civil penalties were issued under one premise. During the interim period between asparagus and sweet corn harvests, the migrant work force is employed by area seed corn companies. While working for the seed corn companies the migrant workers are allowed to remain in Joan of Arc housing. In turn, the seed corn companies reimburse Joan of Arc for housing costs incurred during this period of interim employment. There is no profit involved.

It is the determination of the U.S. Department of Labor that this reimbursement process constitutes a collection of a "fee" by Joan of Arc Company for providing migrant labor although Joan of Arc has no input in setting terms and conditions of employment. We feel this determination is in direct contrast to the spirit of the Farm Labor Contractor Act.

Joan of Arc Company emphatically supports the testimony of Roderick K. Shaw, Jr., General Counsel for the Citrus Industrial Council, presented on February 23, 1978.

We also strongly urge your Subcommittee on Economic Opportunity to enact legislation that would include the provisions of HR10631, HR10053 and HR8864.

Without this legislation Joan of Arc Company and many like companies face the inevitable choice of:

1) Closing migrant housing between seasonal harvests which would force the migrant crews to seek employment elsewhere and increase the likelihood of legal confrontations or
2) Reduction or elimination of production which would result in economic hardships for the displaced migrant work force and their home states that would have to accept the burden of an increased number of unemployed.

Joan of Arc Company has long been a leader concerning the migrant work force. However, when this concern and leadership exposes the Company to possible citations and civil penalties, then it becomes necessary for the Company to reassess its position and practices in regards to migrant labor.

Again, Joan of Arc Company confirms its total support of Messr. Shaw's testimony and urgently requests that HR10631, HR10053 and HR8864 be adopted. The only other acceptable alternative is for the U.S. Department of Labor to rescind its citations and civil penalties levied as a result of the August 23, 1977 inspection.

Respectfully,

JOAN OF ARC COMPANY

Robert W. Hughes

Robert W. Hughes
Employee Relations Manager

RWH:so

MAR 6 1978

UNITED STATES COMMISSION ON CIVIL RIGHTS

MID-ATLANTIC REGIONAL OFFICE
2120 L STREET, NW - ROOM 510
WASHINGTON, D.C. 20037
TELEPHONE: (202) 254-6717

March 2, 1978

Mr. Bill Causey
Counsel
Subcommittee on Economic Opportunity
320 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Causey:

We understand that the Subcommittee on Economic Opportunity held hearings last week on the 1974 Farm Labor Contractor Registration Act. We regret that we did not learn of the hearings in time to request the opportunity to testify. If further hearings are scheduled, we would be interested in presenting testimony, if given sufficient notice.

The issue of farm labor contractors, or crew leaders, is of great concern to us. In an unprecedented joint investigation, the Pennsylvania and Delaware Advisory Committees to the U.S. Commission on Civil Rights looked into the working and living conditions of mushroom workers. In the course of our study we learned that the crew leader is the single most serious and complained of problem confronting mushroom workers. In fact, the problem is a continuing one, as the enclosed clippings demonstrate: a crew leader who recruited young workers in Puerto Rico was arrested on charges of selling alcohol to a minor.

Most crew leaders in the mushroom industry do not come under the provisions of the Federal act since they are not involved in the interstate transportation of workers. The Committees therefore recommended that the Pennsylvania and Delaware legislatures adopt legislation comparable to the Federal law.

We obviously feel therefore, that nothing should be done to weaken the Federal statute.

We are taking the liberty of enclosing a copy of our report to the U.S. Commission on Civil Rights and request that it be included in the record of your hearings.

Thank you for your consideration.

Sincerely,

Grace Alpern | Howard Brown

GRACE ALPERN, Chairperson
Pennsylvania Advisory Committee

HOWARD BROWN, Chairperson
Delaware Advisory Committee

Enclosures

MAR 1

Libby's
Libby's
Libby's

Leipsic, Ohio
March 3, 1978

Representative Ike Andrews, Chairman
Economic Opportunity Subcommittee
House of Representatives
Washington, D.C.

Re: FEDERAL LABOR CONTRACTOR REGISTRATION ACT

Dear Sir:

We have recently been informed that your Subcommittee has been considering amendments to the Federal Labor Contractor Registration Act (FLCRA). We cannot urge you strongly enough to fully realize the positive benefits which these amendments will provide to all concerned. Let me discuss some details.

Because the term, "migrant worker", is not clearly defined under FLCRA, there is much confusion and misunderstanding among growers, processors, and other employers of migratory labor, not to mention the U. S. Department of Labor. Our plant employs many people, both migrant and local, on a seasonal basis and the same is true for the area growers. Under FLCRA all of these people are considered migrant. We who rely upon seasonal employees find it disturbing that all seasonal agricultural workers are deemed migrant, for a number of reasons. First, we feel there is a clear difference between local and migratory seasonal workers, mainly because the migrant does not return home after the day's work has been completed. Local people do not have any connection with crew leaders who, in the true sense of the word, organize migrant laborers and find them work, housing, transportation, and food. Local people do not rely upon someone to do this for them. FLCRA was designed to protect migrants from occasional abuses by crew leaders. This brings us to the second point: To pool agricultural employees under an act intended to protect only a segment of the industry work force can only serve to confuse the issue and create a large inefficient agency which wastes time (both theirs and ours) and tax dollars to regulate and inspect in areas such as processing and corporate farming, which have no valid association with the problem at hand. To raise a

Libby, McNeill & Libby · 701 west main street · leipsic, ohio 45856 · phone (419) 943-2121

third and final argument, if FLCRA can see no difference between segments of seasonal agricultural workers, then what is the reason for limiting the regulation to the Agriculture Industry? What is the difference between a temporary field worker and a temporary construction worker or student summer jobber? If the only difference is the term "agriculture", then we feel our industry is being unfairly discriminated against. However, if the difference is that the field worker is migratory, then we want a clear definition of a migrant. This will clear up a great deal of confusion and benefit everyone involved, especially those for whom FLCRA was designed to protect.

Sincerely,

R. J. Peterson
District Agriculture Supervisor
Libby, McNeill & Libby, Inc.
701 East Main St.
Leipsic, Ohio 45856

Now the National Food Processors Association

NCA National Canners Association

1133 Twentieth Street N.W.
Washington, D.C. 20036
Telephone 202/331-5900

Legislative Affairs Division
Jerome R. Gulan
Director/Vice President
202/331-5939

MAR 23

March 23, 1978

The Honorable Ike F. Andrews
Chairman
Subcommittee on Economic Opportunity
Committee on Education and Labor
U. S. House of Representatives
320 Cannon House Office Bldg.
Washington, D. C. 20515

Dear Mr. Chairman:

Attached is a statement from the National Food Processors Association regarding amendments to the Farm Labor Contractors Registration Act (FLCRA) contained in H.R. 10631, H.R. 10053 and H.R. 8894, which were subject of hearings before your subcommittee on February 22 and 23.

As the attached statement indicates the food processing industry is concerned with interpretations given to FLCRA, especially in the states, that bring processors and their employees under certain requirements of the Act.

NFPA does not believe that it was the intent of Congress to encompass manufacturers under registration or other provisions of the Act. We urge that you and your subcommittee seek administrative remedies to clarify application of the Act or move forward with appropriate legislative amendments.

Thank you for consideration of the views of the canning industry.

Sincerely,

Sheila M. Bamberger

Sheila M. Bamberger
Associate Director
Legislative Affairs

Attachment

cc: All Subcommittee Members
Charles J. Carey, President, NFPA

March 22, 1978

STATEMENT OF THE NATIONAL FOOD PROCESSORS ASSOCIATION WITH RESPECT TO THE PROPOSED AMENDMENTS TO THE FARM LABOR CONTRACTORS REGISTRATION ACT (FLCRA)

H.R. 10631, 10053 and 8894

On behalf of the National Food Processors Association (NFPA), we take this opportunity to submit for the record a statement on the proposed amendments to the Farm Labor Contractors Registration Act (FLCRA) and specifically the amendments contained in H.R. 10631, 10053 and 8894. The National Food Processors Association (formerly the National Canners Association) is a non-profit trade association with approximately 600 members in the United States. Members of the NFPA pack between 85 and 90 percent of the total United States production of canned foods, vegetables, soups, juices, meat and poultry products, seafoods, baby foods and specialty items.

NFPA supports the statements previously submitted on behalf of the National Council of Agricultural Employers and the Citrus Industrial Council. In particular, NFPA urges adoption of three clarifying amendments which would insure that the original intent of Congress is carried out and that food processors and their employees who employ migrant workers are not subject to unwarranted regulation under FLCRA.

The first amendment would strike the word "personally" from Section 3(b)(2) of the Act. Section 3(b)(2) was intended to provide an exemption for farmers, processors and other agricultural employers who hire migrant workers for use at their own facilities. Unfortunately, the Department of Labor has interpreted the word "personally" in Section 3(b)(2) so as to exempt only those agricultural employers organized as individual proprietorships, while processors organized as corporations, according to the Department of Labor, are not eligible for the exemption. This interpretation has absolutely no basis in the legislative history nor in the policies underlying the Act. Congress clearly intended that all farmers and food processors be exempt and the proposed amendment would help accomplish that purpose.

The second amendment clarifies language added by Congress in 1974 to insure that farm labor contractors who happen to own farms are not exempted for the services they provide to other farmers. Unfortunately, the Department of Labor has interpreted this amendment in such a way as to deny legitimate processors and handlers of the exemption provided by Section 3(b)(2). The clarifying language is set forth in the margin and is drafted in order to insure that an exemption is only provided where the workers are used for farmers' or processors' own operations.*/

Finally, we support amendments to Section 3(b)(3) of the Act in order to make clear that bonafide employees of farmers, processors and other agricultural employees stand on the same footing as their members. Thus, if the employer is exempt, then his employee shall be similarly exempt. This amendment was made necessary by an unduly narrow interpretation of the exemption by the Department of Labor which had the effect of denying bonafide, full-time employees of farmers and processors the exemption which Congress intended that they have while acting on behalf of their employers.

We request that the foregoing comments be made a part of the record of the hearings of the Subcommittee and trust that they will be given serious consideration when the Subcommittee acts on H.R. 10631, 10053 and 8894.

---

*/ Section 3...

(b)...Such term shall not include...

(2) any farmer, processor, canner, ginner, packing shed operator or nurseryman who [~~personally~~] engages in such activity for the purpose of supplying migrant workers solely for his own operation including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, packed in or diverted from its own operation.

united fresh fruit and vegetable association

1019 19th Street NW
Washington, DC 20036
202-293-9210

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DALE S. WATSON
The Great A&P Tea Co., Inc
Montvale, New Jersey

BERNARD J. IMMING, CAE
President
VALERIA S. LINGAR
Secretary and General Manager
RICHARD A. GALLOWAY
Vice President, Administration
JOHN D. NELSON, JR.
Vice President, Member and Consumer Services
ROGER J. STROH
Vice President, Public Affairs

the fresh approach

March 27, 1978

The Honorable Ike Andrews
Chairman, Subcommittee on Economic Opportunity
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Andrews:

The United Fresh Fruit and Vegetable Association commends you and your committee for hearings held on the Farm Labor Contractor Registration Act.

We sincerely hope that as a result of the congressional hearings, the regulations and interpretations of the FLCRA will be directed towards the crew leader for whom it was intended.

Enclosed is the United Fresh Fruit and Vegetable Association's testimony on the amendments to the FLCRA pending before your committee. We would like our testimony to be a part of the official hearing record.

Thank you.

Sincerely,

Llewellyn H. Gerson

Llewellyn Henley Gerson
Director of Government Relations

Enclosure

Statement of
Bernard J. Imming, President
United Fresh Fruit and Vegetable Association
Washington, D.C.
Before
The Subcommittee on Economic Opportunity
Of The
U.S. House of Representatives
March 22, 1978

Mr. Chairman and members of the committee:

I am Bernard J. Imming, president of the United Fresh Fruit and Vegetable Association, headquartered in Washington, D.C. The United is the national trade organization for the fresh fruit and vegetable industry with more than 2,700 member companies throughout the United States. Our members represent all factors in the production and marketing of fresh produce and handle more than 80 percent of the nation's tonnage of commercially produced fresh fruits and vegetables--a $14 billion dollar annual business with a physical volume of over a million carloads per year.

I appreciate this opportunity to present our industry's views on amendments to the Farm Labor Contractor Registration Act.

United fully supports amendments to the FLCRA as in H.R. 8894, 10053, and 10631. These bills essentially clarify who is and who is not to be regulated as a farm labor contractor.

During consideration of the 1974 amendments to the FLCRA, dialogue on the House and Senate floors and the official Committee Report make it clear that it was Congress' intent to protect migrant agricultural workers against the abuses of crew leaders. However, in the ensuring regulations, migrant was expanded to mean any agricultural worker. Crew leader was expanded to cover virtually all agricultural employment. The current legislative proposals, H.R. 8894, 10053 and 10631 would benefit both the Department of Labor and agricultural employers by re-establishing congressional intent as to who is and who is not to be regulated by the FLCRA.

Suggested clarifying amendments

1. The United suggests that section 3(b)(2) of the FLCRA be amended by deleting the word "personally", as proposed in H.R. 8894, 10053 and 10631. Because the regulations interpret "personally" to mean "in person," corporations, partnerships and associations are not exempt from the act. "Personally" was meant to distinguish the direct hiring of workers as employees of the farmer or processor from indirect hiring through crew leaders. It was not meant to distinguish individually from corporately. We believe that the DOL is using its interpretation of the word "personally" to mean "unincorporated" and thereby placing a restiction on the intended exemption. Striking "personally" will not affect the application of the FLCRA to crew leaders.

2. The United supports the amendment in H.R. 8894, 10053, and 10631 to add the words "including its planting, cultivating, or harvesting of crops to be grown, processed, canned, ginned, or packed in or diverted from its own operation," immediately before the semicolon in section 3(b)(2) of the act. This suggested wording ensures that the section 3(b)(2) exclusion will be applicable where the employees plant, cultivate, or harvest a crop only if it is grown on the farm operated by the farmer by whom they are employed; or only if it is to be processed or canned at the plant of the processor or canner by whom they are employed; or only if it is to be packed at or diverted from the packing shed of the packer by whom they are employed. This closes the potential loophole of a farm labor contractor using the 3(b)(2) exemption merely by owning or operating a farm. Under the suggested amendment he must also stop performing contracting services for other farmers.

3. United suggests that section 3(b)(3) of the Act be amended by inserting the words "bona fide" before the word "full-time" and before the word "regular" and striking the language "on no more than an incidental basis". Section 3(b)(3) was meant to provide an exclusion for the bona fide employee of a farmer, processor or other agricultural employer. However, the regulations have interpreted "incidental basis" so narrowly as to make foremen and other bona

fide employees of farmers, processors and packers subject to the Act. A foreman, or full time employee, engaging in worker recruitment only as a part of his overall responsibility to his employer is not a farm labor contractor and should not be regulated as such. The inclusion of the words "solely for his employer" effectively closes the potential loophole. This clause prevents a crew leader from becoming an employee and having each member of his crew become an employee of each employer as they move from job to job. By moving he has not engaged in such activity solely for any single one of those employers.

4. United supports clarification of the term "transport" in section 3 of the act. The DOL has taken the position that the mere advancing of a transportation allowance in the form of money or a ticket constitutes "transporting." Therefore, the person who advances the money or ticket becomes a farm labor contrator subject to the regulatory requirements of the FLCRA. The proposed definition of "transport" in H.R. 8894, 10053, and 10631 clears any confusion on this point by stating that a person held to be engaged in transporting migrant workers should either be the owner of the vehicle or conveyance, or he should control the operation of that vehicle, directly or indirectly, through employees or agents in such a manner as to incur legal liability for the operation of said vehicle.

5. United also supports the clairfying definition of "migrant worker" as in H.R. 8894, 10053 and 10631.

6. United strongly supports the amendment concerning insurance as stated in section 7 of Rep. Ireland's bill, H.R. 10631.

We are in full agreement that farm labor contractors who exploit migrant agricultural workers should be registered and held accountable for their actions. However, the interpretation of the FLCRA has had the effect of broadening the original intent of the Act and accusing all employers of being exploiters of agricultural labor. We strongly urge the adoption of the suggested amendments to clarify the misconceptions and misinterpretations presently confusing the administration of the FLCRA.

MAR 20 1978

MAH

Marsing Agricultural Labor Sponsoring Committee, Inc.

Box 28 (208) 896 - 4168

Marsing Idaho 83639

March 17, 1978

Congressman Ike Andrews, Chairman
House Sub-Committee on Economic Opportunity
and Agricultural Affairs
Room 302
Cannon Office Building
Washington, D. C. 20515

Dear Congressman Andrews,

Enclosed is a statement expressing the views of the members of the Marsing Agricultural Labor Sponsoring Committee. We hope that you will take this into consideration along with testimony before the House Sub-Committee on Economic Opportunity and Agricultural Affairs.

Yours truly,

James Mertz

Marsing Agricultural Labor Sponsoring
Committee, Inc.
James P. Mertz, Secretary

cc: William Causey
Congressman Steven D. Symms
Congressman George Hansen
Senator James McClure
Senator Frank Church
Perry Elsworth

JPM/sm

Marsing Agricultural Labor Sponsoring Committee, Inc.
Box 28 (208) 896 - 4168
Marsing Idaho 83639

The Marsing Labor Association would like to call to your attention some of the specific regulations that are related to Farm Labor Contractor Registration. These regulations were developed by the United States Department of Labor and published in the Federal Register, Vol. 41, No. 126, Tuesday, June 29, 1976.

The Marsing Labor Association does not believe that the intent of Congress is being properly interpreted by the Department of Labor in the following rules and regulations:

1. Section 40.2 states that (a) "the term 'person' includes any individual, partnership, association, joint stock company or corporation."
2. Section 40.2 states that (b) "The term 'farm labor contractor' means any person, who, for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes or transports migrant workers (excluding members of the contractors immediate family) for agricultural employment."
3. Section 40.20 Authorization to house migrant workers. (a) (2) In it's entirety as published in the Federal Registry.
4. Section 40.51 (p) In it's entirety as published in the Federal Registry.

Funk & Wagnalls Dictionary defines a Labor Union "as an association of workers organized to improve working conditions and advance mutual interest." Such associations usually charge a monetary fee to their members and their employers.

However, when we ask representatives of the Department of Labor if labor unions are required to register we are told "No, or it is under study at this time."

The Department of Labor has requested that our labor association register under the provisions of FLCRA. Our labor association does not charge any fees or monies to employees, but the association does assess employers.

Gayle B. Ashton, U. S. Department of Labor, Portland, Oregon, told our group that if one farm worker asks another farm worker to go to work with him, he comes under the act. If one farm worker transports another farm worker, he too comes under the act. Nearly every American citizen is told by news media or in person to "Form Car Pools," yet the migrant farm worker who transports another farm worker comes under the FLCRA.

We believe that a true farm labor contractor does all five of these functions, not one or two. Therefore, if the word "or" was removed and the word "and" put in it's place the intent of Congress would be carried out. In this way the full time farm labor contractor would come under the intent of the act.

In section 40.2 (b) 1. Any nonprofit charitable organization public or nonprofit private educational institution, or similar organization:

We believe that established state chartered nonprofit associations should be exempt from registering under the FLCRA. This can be accomplished by inserting the word "or" between the words nonprofit and charitable, making the sentence read "any nonprofit or charitable organization, public or nonprofit private educational institution, or similar organization."

The Immigration Service estimates that approximately 20% of the undocumented workers in the U. S. are employed in agriculture.

"Section 40.51 (p) In it's entirety as published in the Federal Registry."

It would seem that there is a conflict of intent with the Privacy Act of 1975. The Privacy Act of 1975 states that is a person makes a statement that he is a U. S. citizen, no more questions may be asked regarding such matters, under penalties up to the amount of $5,000.00.

Penalties of $1,000.00 per each violation of employment of "undocumented aliens" may be assessed against agricultural employers, the only divil monies penalty that can be assessed against any employer for employing "undocumented aliens." Which direction should an employer go? Should he violate the Privacy Act with possible money penalties up to $5,000.00 or should he violate the FLCRA with penalties of civil monies up to $1,000.00 per each violation, with a possibility of punitive action as well? What is the intent of Congress?

Paragraph 40.20, (a), (2), This labor association does not require that the farm workers of this area live in the housing facilities of the labor association, as a condition of their employment. Family incomes are such that farm workers can well afford to live in private sector housing. No farm work of any kind is performed at the labor camp where farm workers reside. Many of the farm workers engaged in agriculture employment live in other housing. Is the intent of Congress that OSHA shall inspect labor association owned housing facilities?

We do not ask people to live in our housing units, they ask us if they may rent these units. We believe that everyone has a constitutional right to live where he wishes. Agricultural housing to employees is the only segment of the entire employee housing field that comes under the OSHA inspection program. What is the housing inspection policy for other employees in other industries? Do farm workers living in private sector housing have their homes inspected by OSHA?

Housing Standards, either standard of 20 CFR 620.4 or 29 CFR 1910 142 were acceptable standards as of June 29, 1976. Now only 29 CFR 1910.142 are acceptable standards. This changes the space requirement per occupant from 60 square feet to 100 square feet per occupant, thereby reducing the housing by 40%. We have been told by representatives of the Department of Labor that they are charged with the welfare of all the workers in the U. S. Where does Congress or the Department of Labor plan to house this 40% of agricultural workers which agriculture can no longer legally house?

> Section 40.51 (8) (h). The farm labor contractor must post, at job site, the rate of pay and the duration of employment.

Do other industries have to post in writing the length of employment or the rates of the wages paid?

There has not been a definition of a crew leader as related to a farm labor contractor. We believe that there should be, for in our area we do not have a true farm labor contractor, but crew leaders who supervise the farm workers and work under the direction and control of the farm operator, the real employers. Is it the intent of Congress that all farm foremen or crew leaders should register under the act? The act talks only of migrant farm workers. Now the Department of Labor is trying to encompass all of agriculture's employees under the FLCRA. Is this the intent of Congress? In other segments of the employee field, do those that own cars and drive them in car pools have the same standard of insurance that a similar situation would require of agriculture employees?

The State of Idaho does not have, in it's Department of Employment, any farm placement service for farm workers. Is it the intent of Congress that a labor association which refers farm workers to farm employers register under FLCRA? Should workers be on the search of employment on their own, losing valuable productive time, as well as income, or should there be some type of employment possibilities available to the farm worker, such as employees of other industries have?

Control Number

U.S. DEPARTMENT OF LABOR EMPLOYMENT STANDARDS ADMINISTRATION WAGE AND HOUR DIVISION	FARM LABOR CIVIL MONEY PENALTY REPORT
Name	Registration Number
☐ Farm Labor Contractor	☐ Farm Labor Contractor Employee of ______________
Permanent Address	Investigation Site
Compliance Officer(s)	Date

FLC/FLCE VIOLATIONS	PENALTY	ENTER AMOUNT IF APPLICABLE
1. Failure to register:		
a. Certificate 4(a)	$1000*	
b. ID Card 4(b)	500*	
2. Failure to exhibit certificate 6(a)	50	
3. Disclosure to workers 6(b)	100	
4. Posting at work site 6(c)	50	
5. Misrepresentation to workers 5(b)(2)	400	
6. Failure to keep required records 6(e)	400	
7. Record keeping incomplete or inaccurate 6(e)	200	
8. FLC records furnished to user 6(e)	100	
9. Statement of amounts contractor received provided to worker 6(e)	100	
10. Illegal alien workers (total may exceed $1000) 6(f)	400 ea	
11. Proper money payments 6(g)	200	
12. Worker purchases 6(h)	200	
13. Transporting without certificate authorization 5(a)(4)	400	
14. Operating vehicle used to transport workers 5(b)(8)	200	
15. Vehicle safety 5(b)(8) & 5(b)(12)	400	
16. Vehicle insurance 5(b)(5) & 5(a)(2)	1000	
17. Notification to Secretary of vehicle change 5(d)	50	
18. Housing workers without certificate authorization 5(a)(4)	400	
19. Housing safety and Health (up to $1000) 5(b)(12)	1000	
20. Posted housing conditions 6(d)	50	
21. Notification to Secretary of housing change 5(d)	50	
22. Knowingly made misrepresentations or false statements in application for a certificate or ID card 5(b)(1)	500	
23. Certificate holder is not the real party in interest and real party has had certificate or ID card revoked, denied or does not presently qualify 5(b)(11)	1000	
24. Failure to abide by agreement with workers 5(b)(4)	400	
25. Breach of agreement with user 5(b)(3)	400	
26. Discrimination against workers testifying or exercising rights 13(a)	1000	
27. Engaging unregistered FLC 4(c)	1000 ea.*	
28. Hiring unregistered FLCE 5(b)(10)	300 ea.*	
29. Knowingly employing in any Farm Labor Contractor activity a person who has taken any action that could disqualify the person from holding a certificate or ID card 5(b)(9)	1000 ea.	

GROWER, PROCESSOR OR OTHER USER VIOLATIONS	PENALTY	ENTER AMOUNT IF APPLICABLE
30. Engaging unregistered FLC 4(c)	$1000*	
31. Failure to keep required payroll records 14	400	
32. Failure to keep complete and accurate payroll records 14	200	
33. Failure to obtain and maintain contractor records 14	400	
34. Failure to obtain complete contractor records 14	200	
35. Discrimination against workers testifying or exercising rights 13(a)	1000	
TOTAL ASSESSED PENALTY	XXXXXX	$

If violation is for other than aggravated, willful or recurring, reduce penalty by 50%.

*If the FLC or FLCE has made application prior to beginning this investigation, subtract 50%.

Marsing Agricultural Labor Sponsoring Committee, Inc.

Box 28 (208) 896 - 4168

Marsing Idaho 83639

Several years ago the Department of Labor, through the various state departments of employment had an Annual Worker Plan (AWP). It was quite simple. As an area needed employees, the Dept. of Employment would place an interstate clearance order with the local office of that state's Department of Employment, who in turn would send the order to states that had an over-supply of workers. This order stated minimum pay rates and tentative dates of employment. Farm workers in the supply states were made aware of employment by their local office of employment. Regional Dept. of Labor office was made aware of the need of employees in any given area and the acceptance by employees of a job offer in labor use states. This was all done prior to need dates. Every state has an employment service, either under that name or one that denotes job service. These offices are no doubt staffed. Should the AWP be reinstated very few if any additional employees would have to be placed in the employment service offices. Workers nation-wide would have reasonable current information for employment opportunities, the Dept. of Labor would know how many farm workers were available in any given area, and employers would have information as to availability of agricultural employees.

EDGAR M WYATT PRESIDENT

GARLAND P GOOCH VICE PRESIDENT
V C (Chuck) WYATT TREASURER

LEAMON E CANADY SECRETARY
SHELTON R GRAY ASSISTANT SECRETARY

Wyatt-Quarles Seed Co.

WHOLESALE SEEDS **SEEDSMEN** FARM & GARDEN SUPPLIES

U.S. 70, 3 Miles East. Raleigh, North Carolina 27602 Box 2131, Area Code 919-772-4243
Old 421 at 66 N Winston-Salem, N.C. 27107 Box 12635, Area Code 919-993-8113

MAR 22 197

March 14, 1978

The Honorable Ike Andrews, M.C.
228 Cannon House Office Building
Washington, DC 20515

Dear Mr. Andrews:

It has been brought to our attention that you, as Chairman of the Sub-committee On Economic Opportunity, have before you several amendments to the "Farm Labor Contractor Registration Act" including an amendment "To Provide Specific Seed Industry Exemption", see copy enclosed.

While we are not involved in the mechanics of production and harvesting seeds, we have a direct interest in this amendment since it affects our suppliers and, hence, us. We hope you can lend your influence towards the adoption of this amendment.

With best wishes, I am

Sincerely,

Greyson Quarles

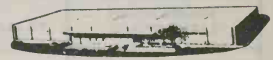
W. Greyson Quarles

WGQ:bg

Enclosure

OFFICE AND WAREHOUSE
WINSTON-SALEM DIVISION

Wyatt-Quarles Seed Company warrants to the extent of the purchase price that seeds or bulbs sold are as described on the container, within recognized tolerances. Seller gives no other or further warranty, express or implied.



MAIN OFFICE AND WAREHOUSE
RALEIGH

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Mailing Address: Box 43089, St. Paul, Minn. 55164

Chairman Ike Andrews
House Committee on Education & Labor
Subcommittee on Economic Opportunity

Amendments on Farm Labor Contractor Registration Act

Statement by O.A. Wolcott
Manager of Planning & Technical Services
CENEX, St. Paul, Minnesota

March 20, 1978

CENEX is a farm supply cooperative wholesale serving nearly a half-million farmers in the Upper United States from Wisconsin to the West Coast. We are producers and distributors of fine quality hybrid seed corns. We strongly urge this committee to recommend an amendment to the Farm Labor Act.

The record of the corn detasseling crews is very good. It is an error on the part of the Department of Labor to include this agricultural operation under the same laws and regulations that regulate organized labor, migrant labor and the benefits of fulltime employees. We recommend that this group be exempt from the Department of Labor laws. We view this as an aggressive step toward government control of farm labor. We are strongly opposed to this.

The detasseling group is defined as men and women, often of school age, who devote less than 13 weeks per year at this work of detasseling corn. They are community residents living within daily travel distance so they can spend the night at home. This provides employment for the local people. It supports the agricultural community, and in many cases, is carried out by the local leaders, teachers and students with a concern for fund raising for community projects. These people have not asked for government intervention on their behalf nor for these regulations which may force growers and seedmen into commercial labor contractors. We urge this committee to provide for the exemption from labor laws for corn detasseling.

At the same time, we are also urging the seed corn industry to withhold their discussions on converting the detasseling operation from hand labor to mechanical. Although it is stated this would eliminate some 250,000 jobs, we feel that favorable action of this committee could save these jobs.

We suggest that the inclusion of corn detasseling groups under the Department of Labor laws is an error. We recommend that the attached amendment be introduced and that favorable committee action support it.

Thank you for the courtesy of accepting our statement and please call on us for more supportive information. Agriculture appreciates your concerns for our needs.

O.A. Wolcott

OAW:elb
Attachment

MAR 22 1978

GROWERS SEED LUBBOCK, TEXAS
ASSOCIATION P.O. BOX 1656
AC 806 747-4125 Zip 79408

March 15, 1978

The Honorable Ike Andrews
Member of Congress
Subcommittee on Economic Opportunity
Cannon House Office Building, Room 228
Washington, D.C. 20515

Dear Congressman Andrews:

I would like to express my support for the American Seed Trade Association position on a proposed amendment to exempt the seed industry from provisions of the Farm Labor Contractor Registration Act. I am enclosing a copy of the proposed amendment.

Recent interpretations by the Department of Labor have placed seed companies in the position of being responsible for actions and equipment over which they have no control. I refer specifically to our use of part-time help during the summer. Many of these people are from the local area who supply their own transportation, either individually or in car pools.

These part-time employees return to their permanent places of domicile each day. We do not believe they qualify as "migrant laborers" and that we should not be required to handle them as such.

When migrant labor is used, our contract is with a "crew boss" who supplies transportation and makes other arrangements pertaining to the work crew. It is his decision as to when, where and for whom they will work. The "crew boss" is a genuine supplier of labor, usually working on a percentage basis. It is our contention that he is legally and morally responsible for providing safe transportation, insurance and any other requirements necessary for the operation of his business.

For these reasons I would like to express my support of H.R. 10053 (The McFall Bill) and H.R. 8894 (The Sarasin Bill) both containing amendments which will help the position of seed growers dealing with the problem.

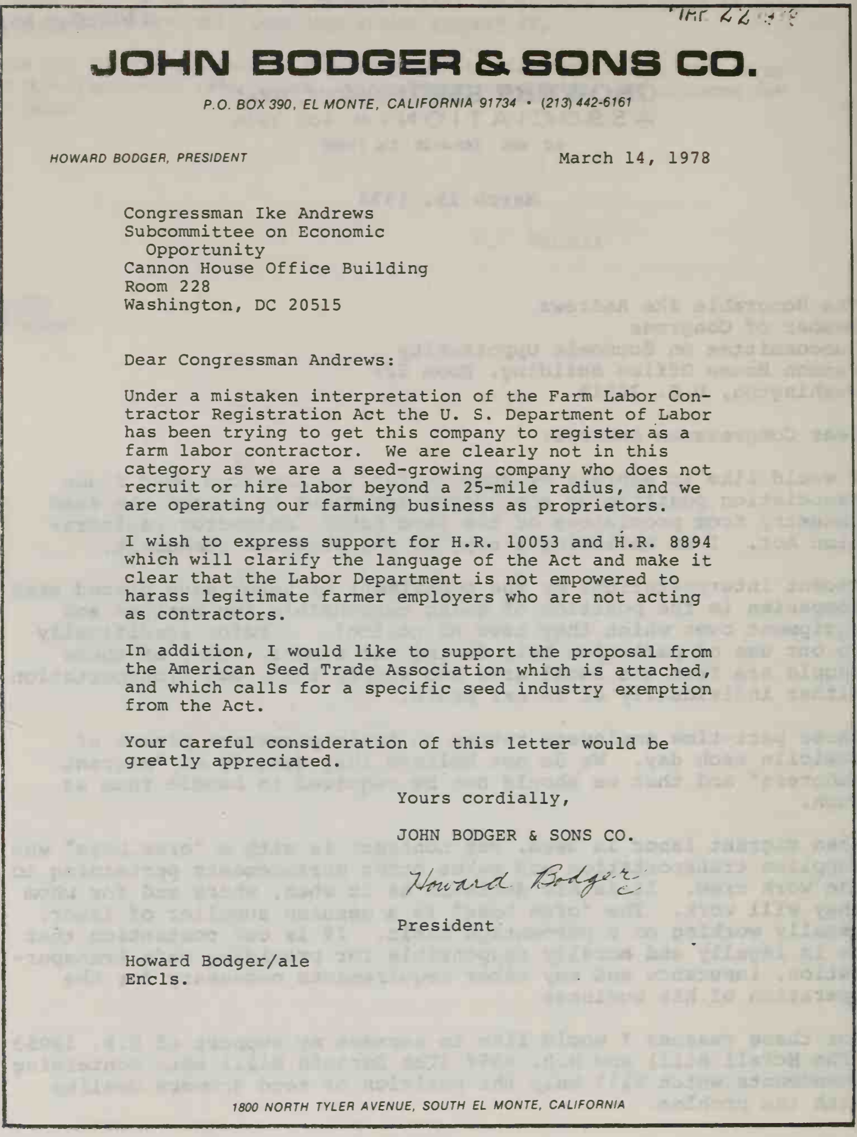
Sincerely yours,

George B. Babcock

George B. Babcock
Executive Vice President
and General Manager

GBB:sl

GROWERS
SEED ASSOCIATION



MAR 22 [illegible]

JOHN BODGER & SONS CO.

P.O. BOX 390, EL MONTE, CALIFORNIA 91734 • (213) 442-6161

HOWARD BODGER, PRESIDENT

March 14, 1978

Congressman Ike Andrews
Subcommittee on Economic
  Opportunity
Cannon House Office Building
Room 228
Washington, DC 20515

Dear Congressman Andrews:

Under a mistaken interpretation of the Farm Labor Contractor Registration Act the U. S. Department of Labor has been trying to get this company to register as a farm labor contractor. We are clearly not in this category as we are a seed-growing company who does not recruit or hire labor beyond a 25-mile radius, and we are operating our farming business as proprietors.

I wish to express support for H.R. 10053 and H.R. 8894 which will clarify the language of the Act and make it clear that the Labor Department is not empowered to harass legitimate farmer employers who are not acting as contractors.

In addition, I would like to support the proposal from the American Seed Trade Association which is attached, and which calls for a specific seed industry exemption from the Act.

Your careful consideration of this letter would be greatly appreciated.

Yours cordially,

JOHN BODGER & SONS CO.

Howard Bodger

President

Howard Bodger/ale
Encls.

AMERICAN SEED TRADE ASSOCIATION, INC.

asta
first-the seed

OFFICE OF THE EXECUTIVE
VICE PRESIDENT

HAROLD D. LODEN
Suite 964, Executive Building
1030 15th Street, N.W.
Washington, D.C. 20005
Telephone (202) 223-4080

SPECIAL INDUSTRY ALERT

March 3, 1978

AMERICAN SEED TRADE ASSOCIATION
FARM LABOR CONTRACTOR REGISTRATION ACT

1978 Amendments

Follow up Notice -- Needed Action

Two days of hearings were held on the pending amendments to the Farm Labor Contractor Registration Act on February 22-23, 1978, before the Subcommittee on Economic Opportunity of the House Committee on Education and Labor, chaired by Rep. Ike Andrews (D-N.C.).

The hearing record will remain open until March 23. This means that interested seedsmen may submit statements prior to that time for inclusion in the printed record of hearings.

The ASTA filed a statement requesting a special seed industry exemption. It also supported the request of numerous growing groups for various specific amendments, generally designed apply the Act only to genuine third party contractors, and not to growers and their employees.

As now interpreted by the Department of Labor, the Act would require annual registration by many seed companies and their farm or personnel managers or other officers. Apparently, registration would be required whenever they hire seasonal labor beyond a 25-mile radius, or whenever a person engages in recruiting activities during more than 13 weeks per year.

In addition to seed companies and employees, registration would be required on the part of many drivers of buses and other farm labor vehicles, and also by large numbers of teachers and others who organize detasselling or roguing crews.

The registration process requires a written application, including fingerprints, which must be repeated each year.

Once registered, a company or registered employee must see that written notices of work locations, wages and working conditions are supplied to each employee at the time of hire; that vehicles pass a safety inspection; and that vehicles have the requisite liability insurance coverage (in addition to workmen's compensation). In some states, the "FLCRA" endorsement raises the premium to four or five times what it would otherwise be.

Seedsmen wishing to express their views on this legislation may file formal statements with the Subcommittee until March 23, for inclusion in the printed hearing record. Statements should be sent to:

Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Building
Room 228
Washington, D.C. 20515

Interested seedsmen may also wish to contact their own Congressmen directly, expressing their support of this legislation.

Since the needed seed industry exemption has not yet been introduced as a separate bill, it is suggested that statements and letters should attach a copy of the proposed amendment, as attached to this mailing. In addition, it would be helpful to express support of H.R. 10053 (the McFall Bill) and H.R. 8894 (the Sarasin Bill), which include a number of detailed amendments which will help the position of growers generally.

Both the seed industry exemption and the other pending amendments are summarized in the ASTA Board Resolution attached to the special FLCRA "industry alert" mailed to all ASTA members in mid-February.

Your ASTA staff is optimistic that this legislation can be passed in the present session of Congress, if seedsmen make their views known. While the Labor Department opposes all amendments, some of the labor groups which testified indicated informally that they do not actually oppose a seed industry exemption. Their position is simply that they would prefer to see no bill at all reach the House floor, for fear that hostile amendments may be added. The Subcommittee Chairman, Rep. Ike Andrews, expressed considerable sympathy for the industry position and indicated that the Subcommittee is likely to report a favorable bill to the full committee.

Letters to Senators are not suggested at this time. The ASTA office will keep you informed as to the continuing progress of this legislation.

LANDMARK, INC.
(614) 225-8711
245 North High Street, Columbus, Ohio 43216

Landmark Seed Processing Plant
Box 445
South Charleston, Ohio 45368
March 16, 1978

The Honorable Ike F. Andrews
Congressman Subcommittee on Economic Opportunity
Cannon House Office Building
Room 228
Washington, D.C. 20515

Dear Congressman Andrews,

I am writing in regard to the Farm Labor Contractor Registration Act of 1963 as amended, and as it pertains to the production of hybrid seed corn.

We understand that the U.S. Dept of Labor has interpreted the law to include the annual registration by seed companies and many of their employees.

The law seemingly would also require registration and fingerprinting of all employees involved in the hiring, firing, transporting, and supervising of high school age detasselers and roguers. Most of these employees are hired in June after school has been dismissed and will work in the fields for 3 to 5 weeks at which time the season is completed. The workers are recruited locally and are paid the Federal minimum wage or more, depending on the responsibility of the job. They are home every night, thus making it difficult for me to understand how they could be classified as migrant workers.

Because of all the time involved, the turnover of help, the mammoth volume of employees, and the short duration of the employment, it is difficult, if not impossible, to stay in compliance with these regulations.

I am sure this law was not written to cover this type of employment. It is possible for seed producers to detassel corn using machines. Just imagine the number of youth that would be unemployed across the midwest if companies were forced to use mechanical detasseling methods.

We need your help to exempt seed production detasselers and roguers from the requirements of this law. Custom combining, hay harvesting, sheepshearing, and poultry related employment have already been declared exempt from this law.

The recruiting function of this employment will begin very soon. You must act quickly to correct this problem.

I also would like to express my support of H.R. 10053 (the McFall Bill) and H.R. 8894 (the Sarasin Bill).

Sincerely,

Gary L. Deerwester

Gary L. Deerwester, Mgr.
Landmark Seed Processing Plant

GLD:gp

MAR 2 1978

MAR 3 1978

J. W. JUNG SEED CO.

Growers of Quality

GARDEN, FARM & FLOWER

SEEDS

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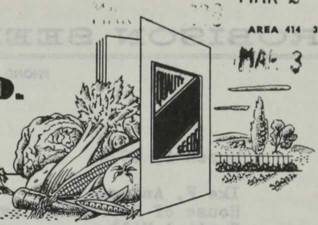
RANDOLPH, WISCONSIN 53956



February 24, 1978

Congressman Ike Andrews
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman Andrews:

We ask your support for the Seed Industry exemption to the Farm Labor Contractor Registration Act of 1963. Recent action by the Department of Labor would appear to force us to register as farm labor contractors to transport seasonal help and corn detasseling help. Since these employees are permanent residents of our community and not "migrant" help we do not feel this narrow interpretation of the law is logical.

Thank you for your consideration.

Cordially,

J. C. Jung

J. C. Jung
J. W. JUNG SEED COMPANY

JCJ:m

MAR 8 1978

ROBISON SEED CO., Inc.

PHONE: Area Code 806 335-1262 • P. O. BOX 30337 [redacted] • AMARILLO, TEXAS 79120 [redacted]

March 2, 1978

MAR 7 1978

Ike F. Andrews
House of Representatives
Capital Hill
Washington, D. C. 20002

Dear Mr. Chairman;

We are writing to let you know that we strongly oppose the over-lapping extention of Seedman with the Farm Labor Contractor Registration Act.

Also that we believe that this extention goes beyond any reasonable interpretation of the law, provides no public benefit, places an unnessary compliance burden on the seed industry and represents a waste of government resourses.

Sincerely,

Mark Robison

Mark Robison
Manager

MR/bjm

Members of Texas Seedsmen's Association, Southern Seedsmen's Association, American Seed Trade Association

NORMARC, INC.

March 13, 1978

Congressman Ike Andrews
Subcommittee on Economics Opportunity
Cannon House Office Building, Room 228
Washington, D. C. 20515

Sir:

Our attention has been called to the Farm Labor Contractor Registration Act. It is our understanding that the Act applies to seed companies that produce seed stock for commercial distribution.

Since seed stock is the basis for all food, we are opposed to any legislation that will add to the cost of food. After an analysis of the requirements of the present act, it is our opinion that the controls proposed would create a substantial increase in the cost of seed stock.

We propose that the enclosed amendment to the Act be adopted to provide specific seed industry exemption.

Your consideration and assistance in getting seed industry exemption would be appreciated.

Very truly yours,

R. H. Stark

Enc.

P.O. BOX 238 TANGENT, OREGON 97389 TELEPHONE (503) 926-5801 TELEX 360-886 CABLE: NORMARC, ALBANY

MAR 23

ROGERS BROTHERS SEED COMPANY

March 14, 1978

Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Building
Room 228
Washington, D.C. 20515

Dear Congressman Andrews:

This letter deals with our concern with reference to the Farm Labor Contractor Registration Act Amendments - 1978.

Traditionally the Seed Industry in the United States involved with the breeding and producing of garden seed and field seed crops employs a large number of highschool and college students for several weeks during the summer vacation months. These students are utilized in working on research farms and also become involved in the tasks of rogueing seed crops to remove off-type plants and are used extensively as well in the removing of the tassels from the female plants in the production of hybrid sweet corn seed and hybrid field corn seed.

This student labor may be hired either by the seed firms themselves, or may be hired by the farmers who are growing the seed under a seedsman-farmer seed growing contract. Students hired for such highly seasonable work may be employed for as short a time as two or three weeks during the summer, or may work for up to two to three months. Actual hiring of the students may be done by farmers growing the seed, the seedsman for whom the seed is being produced, or may be done by highschool teachers who recruit their students and then hire out the crews to the farmers or seed firms for the tasks to be accomplished.

The workers to whom we are alluding in this letter are local young people who are being given an opportunity to work in their own community in wholesome summer jobs which provide income for their continued education in many instances and which gives them the opportunity to learn the value of gainful employment in a well supervised and wholesome outdoor environment.

P.O. Box 1647 | Idaho Falls, Idaho 83401 | Telephone 208 522-0143 | TWX no. 910 977-5724 | Cable Address Rogseed

Please understand that we have no quarrel whatsoever with regulations as they apply to the truly transient labor force many of whom live in transient labor camps and who are temporary residents of the agricultural community. It has been our understanding that the original intent of the Farm Labor Contractor Registration Act Amendments were to deal with abuses that have been inflicted in the past upon such migratory labor and which abuses have not been duplicated in the utilization of the local labor force in the seed producing activities. The members of the Seed Industry in our country take great pride in their position in their local communities and have long established their position as being good, stable and responsible employers of the youthful employees in their local communities of operation.

We do, therefore, urge that your Committee give ernest consideration to the enclosed Seed Industry exemption Amendment to the Farm Labor Contractor Registration Act. Such an exemption will prevent the working of undue hardship on the seed producers and seed breeders as related to the substantial cost in money and time involved in the employment of temporary local workers in this vital segment of the agricultural economy. The Regulations as now written and interpreted represent a serious nuisance factor to the seed producers without offering benefit to the local and non-migratory employees involved.

We also urge that your Committee give its support to HR 8894 and HR 10053 which would limit the coverage of the Act to the traditional migratory farm labor contractors, as was the intent of Congress when this legislation was originally enacted.

Your favorable consideration to the recommendations as made in this letter will be sincerely appreciated.

Yours very truly,

Harvey W. Mauth
President

slp

cc: Congressman George Hansen
Congressman Steve Symms

Henry Field SEED and NURSERY COMPANY, 407 SYCAMORE ST., SHENANDOAH, IOWA 51602

Lee E. Gingery, Vice President

TELEPHONE: AREA CODE 712/246-2110

March 14, 1978

Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Building
Room 228
Washington, D.C. 20515

Dear Congressman Andrews:

As a grower in the seed and nursery industry we are very much interested in the progress of the Farm Labor Contractor Registration Act now in your Committee.

Unless relief is written into the bill we can see problems for us. For example, we do hire teenagers for part-time work in our fields for portions of the summer and fall seasons. Under the apparent provisions of the bill, there would be an excessive volume of work imposed on the people in charge to perform the registration process.

We would certainly hope that seed companies would be exempt.

Thank you very much.

Cordially,

HENRY FIELD SEED & NURSERY CO.

Lee E. Gingery

LEG:cw

MEMBER American Assn. of Nurserymen . . . Mail Order Assn. of Nurserymen . . . American Seed Trade Assn.

Golden Harvest Seeds, Inc.
513B E. Locust/BLOOMINGTON, ILLINOIS 61701
PHONE (309) 827-6091
P.O. BOX 799

March 14, 1978

U.S. Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Building
Rm 228
Washington, D.C. 20515

Dear Congressman Andrews,

Concerning the liberal interpretation by the U.S. Department of Labor of the Farm Labor Contractor Registration Act to include seedsmen hiring teenagers to detassel seed corn during the summer, we at Golden Harvest Seeds wish to go on record in opposition. This ridiculous interpretation of the law should not be tolerated. We are certain that this was not the intent of the law when it was passed years ago and we are certain that in the years which have intervened between then and now, there have been no hardships experienced by anyone involved in the seed industry or in the detasselling force through lack of the current interpretation of the regulations.

By best estimates of the seed industry there are nearly 250,000 teenagers who detassel seed corn. For many of them this is their only chance to make money; last summer we had teenagers who made as high as $700.00. We assume that our industry probably does as much or more than any other to help the teenage job problem about which much clamor is made. If this FLCRA act is enforced, it will only drive the hybrid seed people to total mechanical means of detasselling forcing these teenagers to lose valuable employment opportunities and forcing the price of seed corn to the farmer higher due to lower seed yields.

We therefore urge you to consider and support the proposed amendment attached to this letter. Also, we urge you to support H.R. 10053 (the McFall Bill) and H.R. 8894 (the Sarasin Bill).

Thank you.

Yours truly,

GOLDEN HARVEST SEEDS, INC.

Chuck

Charles R. Finley
Executive Secretary

CRF/jo
Encl.

V. R. SEEDS, INC.
Box M, Plymouth, Indiana 46563 — Phone 219-936-2193

BRANCH OFFICE
Box 34
Flora, Ind. 46929
219-967-4551

March 14, 1978

Congressman Ike Andrews
Sub-Committee on Economic Opportunity
Cannon House Office Building - Room 228
Washington, D. C. 20515

Dear Mr. Andrews,

I am writing concerning the pending amendments to the Farm Labor Contractor Registration Act.

The current interpretation by the Department of Labor, concerning annual registration by Seed Companies when hiring seasonal labor, seems to me to be a little bit out of intent of the original bill. The original Bill as intended is very good, but I believe the evaluations put on by the Department of Labor are excessive and, most importantly, not practical.

V.R. Seeds would like to express their desire to go on record of supporting the amendment to exempt from the Farm Labor Contractor Act the Seed Industry.

We appreciate very much your interest in seeing that bills are interpreted and used in a practical application to benefit all parties involved.

Very truly yours,

John Gerard

John Gerard
President

JG:mjg

ORIGINATORS OF VIGOR-RATED SOYBEAN SEED

NCSA
FIRST THE SEEDS

NORTH CAROLINA SEEDSMEN'S ASSOCIATION
P. O. BOX 2131 -- TELEPHONE AREA CODE 919 772 4243
RALEIGH, NORTH CAROLINA 27602

OFFICERS FOR 1977 - 1978

THOMAS H NUNALEE III
President
Cross Seed Company
P O Box 269 Wilmington N C 28401

CHARLES T PEEL
1st Vice President
Central Carolina Farmers
Durham N C

C EVANS McSWAIN
2nd Vice President
C E McSwain & Sons
Norwood N C

GARLAND GOOCH
Secretary Treasurer
Wyatt-Quarles Seed Company
Raleigh N C

EXECUTIVE COMMITTEE

JESSE R BOYD 1978
Pamlico Chemical Co
Washington N C

WILLIAM K BRAWLEY JR 1980
Seedsmen Inc
Charlotte N C

STEVE BYRUM 1980
Byrum Seed Company
Charlotte N C

ALVIN CHASON 1978
Byrum Seed Company
Fletcher N C

GARLAND EURE 1979
F T Eure & Sons
Hertford N C

MARVIN R GODFREY 1979
FCX Inc
Raleigh N C

CRAWFORD MANN 1978
Blount-Midyette & Company
Washington N C

V C CHUCK WYATT 1978
Wyatt-Quarles Seed Co
Raleigh N C

EX-OFFICIO

J B KITTRELL JR
J B Kittrell & Company
Greenville N C

ADVISORY COMMITTEE

STANLEY A CROSS
Cross Seed Company
Wilmington N C

HERSEY LEE DILDAY
FCX Inc
Raleigh N C

JAMES JEFFREYS
Jeffreys Seed Company
Goldsboro N C

W GREYSON QUARLES
Wyatt-Quarles Seed Company
Raleigh N C

JIM SUTHERLAND JR
Pioneer Hi-Bred Inc
Laurinburg N C

March 14, 1978

The Honorable Ike Andrews, M.C.
Sub-Committee On Economic Opportunity
228 Cannon House Office Building
Washington, DC 20515

Dear Congressman Andrews:

As Chairman of the Legislative and Liaison Committee of the North Carolina Seedsmen's Association, we would like to go on record for the North Carolina Seedsmen's Association as being supportive of the proposed amendment, copy enclosed, "Farm Labor Contractor Registration Act".

Except for the production of tobacco, soybeans, hybrid corns and some small grains, this would not directly affect North Carolina's seed production. However, it would indirectly affect all seeds used in North Carolina which are produced in other states. As you know, any additional trouble or expense incurred by these producers will be passed on to the consumers and will only help to increase the expense of seeds which are vital to the production of food, fiber and other necessities.

The North Carolina Seedsmen's Association kindly asks for your support and aid in passing the proposed amendment to exempt the seed industry from these regulations. Please include in the printed hearing record our enclosed statement.

Thanking you in advance for any consideration you might give us in this matter, we are

Yours sincerely,
NORTH CAROLINA SEEDSMEN'S ASSOC.
Marvin R. Godfrey
Marvin R. Godfrey, Chairman
Legislative and Liaison Committee

bg

Enclosures

NCSA
FIRST THE SEEDS

NORTH CAROLINA SEEDSMEN'S ASSOCIATION
P. O. BOX 2131 – – TELEPHONE AREA CODE 919 772-4243
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Wyatt-Quarles Seed Company
Raleigh N C

JIM SUTHERLAND JR
Pioneer Hi-Bred Inc
Laurinburg N C

March 14, 1978

Sub-Committee On Economic Opportunity
House Office Building
Washington, DC 20515

Gentlemen:

We wish to file the following statement to be included in the printed hearing record of the Sub-Committee On Economic Opportunity considering amendments to the "Farm Labor Contractor Registration Act".

Whereas seed production is a very small portion of U. S. agriculture, it is a most important part of all U. S. production of food and fiber, and directly or indirectly affects all U. S. citizens. Any hardship or additional expenses imposed upon the production of seed is multiplied many times before being passed on directly to the U. S. consumering public.

Therefore, we recommend that the attached additional proposed amendment, "To Provide Specific Seed Industry Exemption", be approved and added to the "Farm Labor Contractor Registration Act".

NORTH CAROLINA SEEDSMEN'S ASSN.
Marvin R. Godfrey
Marvin R. Godfrey, Chairman
Legislative and Liaision Committee

FARM LABOR CONTRACTOR REGISTRATION ACT

ADDITIONAL PROPOSED AMENDMENT

TO PROVIDE SPECIFIC SEED INDUSTRY EXEMPTION

A new paragraph (10) is hereby added following paragraph (9) of Section 3(b) of the Act, reading as follows:

(The term "farm labor contractor" shall not include:)

(10) any person, with respect to such person's activities in the business of producing, processing or distributing seeds for planting or distribution for planting (or in related or incidental activities, including research), or any person who furnishes workers to or grows crops under contract for such person, or any employee of either such person, if all of the seasonal employees used in the business, who are customarily engaged in agricultural employment for more than thirteen weeks per year, can regularly return to their permanent places of domicile each day after working hours.

Golden
Harvest

GOLDEN SEED CO., INC.
GOLDEN HARVEST SEEDS
27420 - 137th AVE N.
CORDOVA, ILLINOIS 61242
AREA CODE 309
654-2201 654-2206

March 15, 1978

The Honorable Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Building
Room 228
Washington, D.C. 20515

Dear Congressman Andrews:

In brief, the interpretation of the Farm Labor Contractor Registration Act that would put teenagers under the "migrant workers" classification and require registration of many seed companies and their farm or personnel managers or other officers is inconceivable to me.

By the best estimates of the Industry there are nearly 250,000 teenagers who detassel seed corn. For many of them this is the only chance they have to make money. Since Illinois probably raises more hybrid seed corn than any of our neighboring states, we estimate that between 80 and 100,000 teenagers would suffer.

Last summer we had teenagers who made as high as $738.00. I would assume that our industry probably does as much or more than any other to help the teenage job problem about which so much clamor is made. If this act is enforced, it will only drive the hybrid seed people to total mechanical means of detasseling. This not only will reduce or entirely remove valuable employment for teenagers, but will lower the yield per acre and probably force the price of seed to the farmer higher.

I ask your support of H.R. 10053 (the McFall Bill) and H.R. 8894 (the Sarasin Bill) and also the proposed amendment attached to this statement.

Sincerely,

John A. Golden

John A. Golden, President
GOLDEN SEED CO., INC.

JAG/jh

FARM LABOR CONTRACTOR REGISTRATION ACT
ADDITIONAL PROPOSED AMENDMENT
TO PROVIDE SPECIFIC SEED INDUSTRY EXEMPTION

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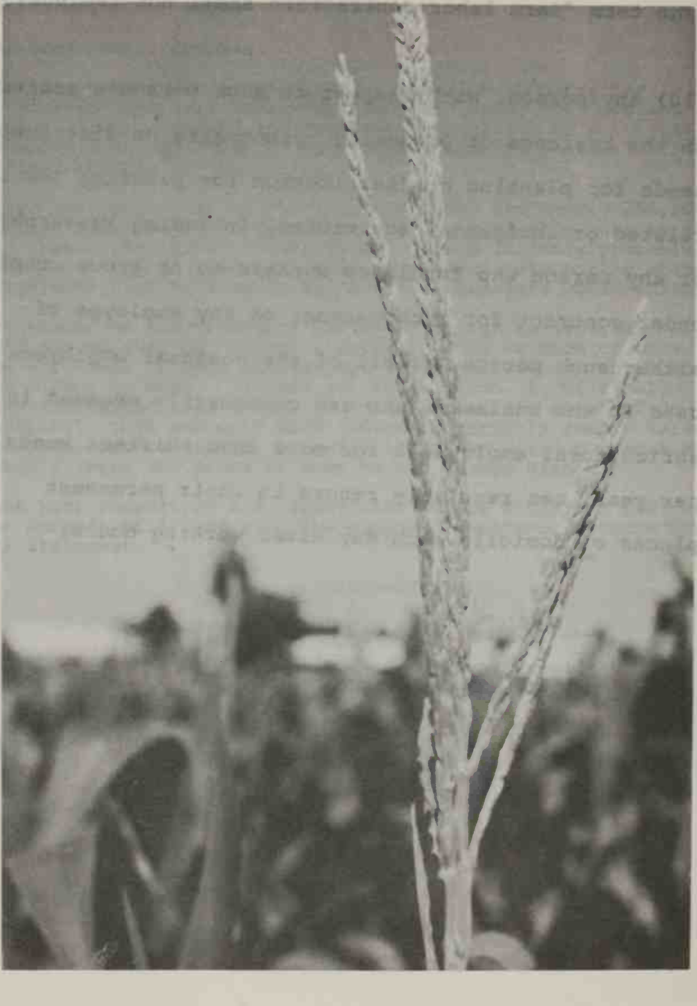
PIONEER HI-BRED INTERNATIONAL, INC

Farm Labor Contractor Registration Act Amendments -- 1978

Statement of Dr. Owen J. Newlin, Vice President

In Support of H.R. 8894, H.R. 10053 and Other Amendments



PIONEER HI-BRED INTERNATIONAL, INC

Farm Labor Contractor Registration Act
Amendments -- 1978

Statement of Dr. Owen J. Newlin, Vice President

In Support of H.R. 8894, H.R. 10053 and Other Amendments

Summary

The Farm Labor Contractor Registration Act of 1963, as amended, ("FLCRA") defines the term "migrant worker". That definition as applied by the Department of Labor extends the supposed protection of the Act to every agricultural worker in the country. Pioneer Hi-Bred International, Inc. ("Pioneer") urges the amendment of the FLCRA generally along the lines of H.R. 10053 and H.R. 8894, which both attempt to limit the reach of the FLCRA to employment of true migrant farm labor, as originally intended by Congress. Further, Pioneer urges an amendment to the FLCRA to make clear the exempt status of the use of seasonal day-haul labor under the unique circumstances of the seed industry. We endorse the excellent suggested language for such an amendment which is incorporated in the statement of Earl Olson, President of the American Seed Trade Association.

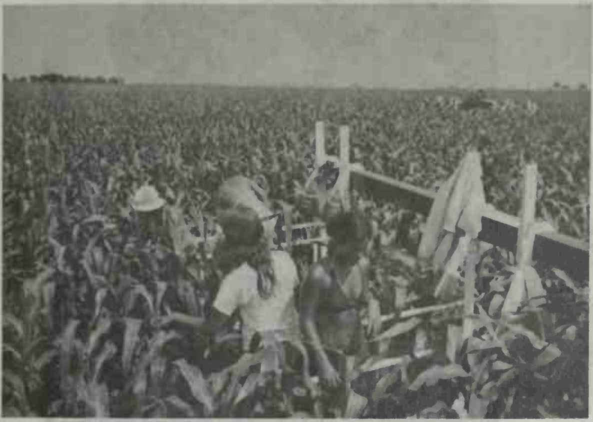
Pioneer has been in the business of breeding, producing and marketing hybrid seed corn since 1926. Today, Pioneer and its distributor produce and sell approximately thirty percent of the hybrid seed corn used by the farmers of the United States and also produce and sell several other agricultural seeds and seed stocks. Pioneer hopes by this statement to give the Committee a better understanding of the needs of the seed industry, the uses of seasonal workers in seed production, and the problems of the seed industry under the FLCRA.

Uses of Seasonal Workers in Seed Production

A seed corn tassel is shown on the cover of this statement. To produce hybrid seed corn, two different parent lines of corn are planted in the same field and cross-pollination (crossing) is accomplished by detasseling. One line furnishes the pollen for the cross; this is designated as the male parent. All plants of the line being used as a female parent must have their tassels removed before they shed any pollen. This assures

Most of the tassels have been removed from the female parent rows. Note the tassels on the male parent row which will furnish pollen for the cross.

that the kernel embryos of the female line are pollinated or fertilized only by pollen from the male parent. A tassel emerges from the top of the corn plant in mid-summer. As soon as the tassel is visible in the female line plants, workers grasp it by hand, pull it from the plant and drop it on the ground. Most workers ride on platform-machines driven slowly through fields by trained crew supervisors.



Detasselers are moved slowly through the fields on platform machines. Supervisors who drive the machines keep a sharp eye on the quality of the work, as well as the safety of the workers.

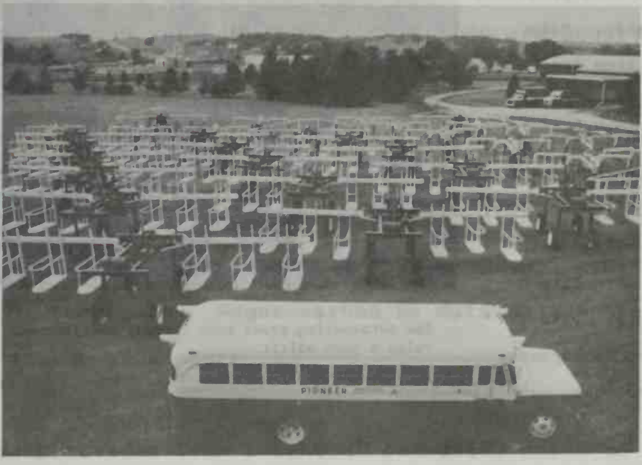
Other work which is performed by young people is necessary to the breeding and production of hybrid seed corn. "Roguing" is the removal of off-type plants from seed fields to maintain genetic purity. In the development of superior new hybrids, young people currently make thousands of hand pollinations annually.

These workers are making hand pollinations which are necessary for the development of new hybrids. Paper bags protect the fertilized ears from extraneous pollen.

Workers are Local People

Pioneer annually employs approximately 52,000 people in detasseling, including supervisory workers. Pioneer's payroll in 1977 for temporary agricultural workers (mostly detasselers) was $13,911,996. About thirty percent of the estimated 21.6 million bags (each containing about 80,000 kernels) of hybrid seed corn sold in the United States is produced by Pioneer and its distributor. Most detasselers range from fourteen to sixteen years of age, and on the average work 10 days each year. For many it is their first job working for any employer other than a parent or relative; often, it is

The need to detassel promptly at the proper stage of growth requires that large numbers of detasselers be ready to work on short notice.



Shown here is a bus typical of those used to transport detasselers from the seed fields. In the background are some of the many platform machines on which workers ride through the seed fields.

This family worked together to detassel a seed field near their home in order to earn money for a vacation trip.

the only job available to teenagers during the summer. Detasselers live in their permanent homes and commute from farms and small and medium-sized towns within an approximate thirty-five mile radius of the seed producing fields. Many of them are children of the seed companies' customers and for many of them, the work is more like a social event than employment. Since the

The detasseling crews work closely together and develop a team spirit.

workers are members of the community in which the seed companies sell their products, a strong personal relationship exists between the companies and these temporary employees.

Terms of the Work

Because tassels do not emerge from all corn plants at the same time, detasselers must go through each field from four to five times over about a ten-day period. Because of varied planting dates and differing growth characteristics of the various parents of hybrids being produced near each seed handling facility, the detasseling season usually extends over about three weeks. A typical working day ranges from six to eight hours. Work on weekends may be necessary to keep ahead of tassel emergence and assure purity of seed.

Detasselers receive the minimum wage. An average worker earns about $250.00 during a detasseling season, providing money for clothing, vacation trips and other items desired by teenagers. Wages earned by detasselers are not a primary source of support.

Transportation from a central gathering point to the various seed fields is usually furnished by the Company. Leased school buses, which have already passed inspection, and company-owned buses which meet state vehicle safety standards, are used.

Problems Under Farm Labor Contractor Registration Act

Strained Interpretations of Law: The Department of Labor has committed substantial government resources to the enforcement of the FLCRA against the seed industry. This enforcement is predicated on some rather bizarre interpretations of the Act.

Section 3 of the Act contains definitions. The term "farm labor contractor" is defined in 3(b) subject to exemptions contained in 3(b)(1) through 3(b)(9). The second such exemption provides "such terms shall not include-- . . . (2) any farmer, processor, canner, ginner, packing shed operator, or nurseryman who personally engages in any such activity for the purpose of supplying migrant workers solely for his own operation;". The legislative history surrounding this particular exclusion is set out in House Report No. 93-1493, wherein Mr. Perkins of the Committee on Education and Labor said:

> "While it is the feeling of the Committee that the definitions and exclusions contained in Section 3 of the Act as it would be amended by this bill exclude the traditional relationship which exists in the hand-harvesting of certain crops in the Pacific Northwest whereby a teacher or other incidental employee of a grower may recruit, solicit, hire, furnish or transport students or other permanent residents of the area and whereby such recruitment, solicitation, hiring, furnishing or transporting is done in his capacity as an employee and results in the establishment of an employer-employee relationship between the grower and the students or other permanent residents mentioned above, some apprehension was indicated by certain Members. It should be made clear that the Committee does not intend, in any

> manner, to disturb the traditional historical relationship described above which the Committee does not feel is a farm labor contractor relationship as defined by this Act." (Emphasis added)

Even in the face of the clear intention of Congress and the Committee, the Department of Labor has adopted two strategems to deny the seed industry the benefit of this exemption. The first is as announced in the October 3, 1977, letter of Xavier M. Vela that a corporation owned by more than a single farmer may not act "personally" under the Act. This interpretation has been discussed at length in this record.

The Department's second attack on the seed company's use of the 3(b)(2) exemption is as announced in the January 6, 1978, letter of Herbert J. Cohen, Assistant Administrator of the Wage and Hour Division (copy attached to this testimony). As Mr. Cohen recognizes, much of the seed production in the United States today is done pursuant to an arrangement where the seed company delivers parent seed to a farmer for production under circumstances that the seed company retains ownership of the seed, the plants and the crop, and exercises substantial control over the growing operation. Several courts have construed such arrangements to be bailments much like the delivery of an automobile to a garage for mechanical work: When the work has been performed, the results of it are returned to the owner without any contention that the mechanic or the farmer ever acquired any rights therein except perhaps for a right to enforce payment for services rendered. Nevertheless, Mr. Cohen finds the existence of a joint venture and, therefore, the requirement of the exemption that the laborers be "solely for his own operation" is defeated.

Section 3(b)(4) exempts from registration any person "who engages in any such activity (A) solely within a twenty-five mile intrastate radius of his permanent place of residence and (B) for not more than thirteen weeks per year;". This exemption has often been referred to in testimony before the Subcommittee, but what has not been mentioned is the Department's view that a single telephone call, use of the United States Mail or advertisement in a newspaper is sufficient to violate the twenty-five mile restriction. The Department holds the view that if a contractor engages at all in any of the enumerated activities within a particular calendar week, regardless of how much or how little was done in that week, that week will be counted as one of the thirteen weeks permitted by the exemption. Thus, if a prospective detasseling contractor spends five minutes every Friday afternoon recruiting high school students for that year's detasseling season, the exemption is breached after the end of March even though in the aggregate, only one hour and five minutes has been devoted to these activities; and in any event, if the contractor uses the telephone once, the exemption is also breached.

Representatives of the Department have also told Pioneer that a corporate employee who deals with a properly registered farm labor contractor is engaged in the farm labor contractor activity of "furnishing" and thus must also register. This ingenuous argument, if carried to its logical conclusion, would establish a never-ending chain of relationships between "farm labor contractors", each in turn required to register, and would ultimately require the registration of every corporate employee, including the Chief Executive Officer.

Consider the application of the "furnishing" interpretation together with the "joint venture" interpretation to Pioneer's contracting activities: Each and every Pioneer employee must register with the Department. Each farmer must also register with the Department because he is not dealing with his own crop and he is negotiating with a farm labor contractor (Pioneer) and, therefore, furnishing laborers to the "joint venture". Section 14 of the Act then requires both Pioneer and each farmer to maintain and furnish to each other payroll records for each and every detasseler used on that farmer's land. In that a detasseler in any given day may be on fields owned by five or more different farmers, Pioneer's obligations to keep records by detasseler and by seed field are enormous. Recordkeeping for the farmer is impossible.

These strained interpretations in disregard of the intention of the Act result in a crazy quilt of profligate waste of government resources and a burgeoning of administrative bureaucracy. Other results of the Department's efforts include:

Administrative Bottlenecks: Even ignoring the "chain of registration" logic discussed above, it is estimated that at a minimum one employee will need to be registered and fingerprinted for each ten detasselers. This amounts to 5,000 to 6,000 registrations for Pioneer alone, as compared to approximately 12,000 registrations in the entire country in 1977. Approximately 1,000 of these registrants would have to take the physical examination required for drivers of buses, even though all drivers are properly licensed.

The Regional Wage and Hour Office in Kansas City has admitted to being inadequately staffed to handle this volume of registrations. State employment service agencies, required by Department of Labor regulations to handle the applications, are not staffed to handle the load and funds are not available for additional staff.

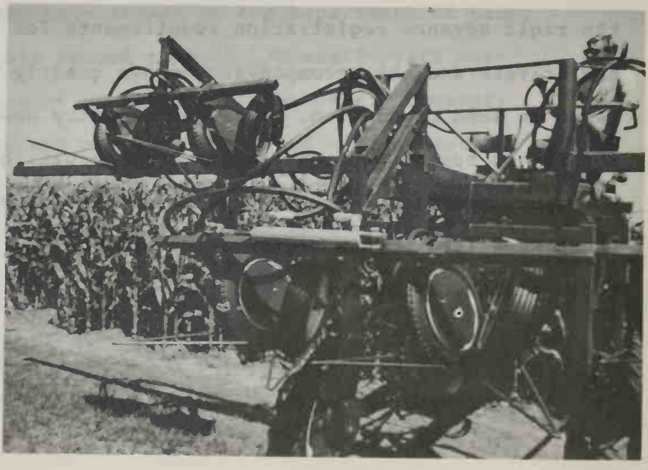
FLCRA was originally enacted for the benefit of true migrant workers. Representatives of the Department of Labor have testified in this record that 37 1/2 staff years were budgeted for enforcement of the FLCRA last year. However, true migrant workers and representatives of migrant worker organizations have testified that the Department's enforcement of the Act in favor of true migrants has been so ineffective as to be laughable.

The reason for this apparent contradiction is clear to Pioneer: Of the 37 1/2 man years budgeted by the Department, approximately six were expended by it in the State of Indiana in an audit of Pioneer's operations there. Department personnel have told us informally that they believe they found approximately 250 alleged violations, consisting almost entirely of failure to register "farm labor contractor" employees and failure to certify to the Department that insurance coverage was in effect and that vehicles had been inspected. It is clear to us that the real aim of this audit was to frighten Pioneer into mass registration in 1978 toward the end that an increased number of registrations would give rise to increases in budget and staff for the enforcement of the Act. The real effect of this audit was to slight the intended beneficiaries of the Act.

Inability to Respond to Emergency Needs: Because weather conditions can increase greatly the number of detasselers needed in order to remove tassels in a timely fashion and assure purity of seed, requiring great flexibility in work scheduling, the rigid advance registration requirements for recruiters and drivers and the accompanying delays greatly increase risks in seed production. The seed industry needs the ability to engage personnel needed to recruit, hire and transport additional detasseling personnel immediately when the need arises. This registration process would take up to three months, or longer.

Many of those who would be required to register are college students who cannot anticipate summer work needs more than a few weeks in advance of the detasseling season.

Many seed producers now use mechanical tassel pullers as shown here. Tassels are caught between rotating tires and removed. More leaves are removed by detasseling by this method. This will affect seed yields adversely, increasing seed corn costs.



Reduced Farm Income is the Industry's Alternative to FLCRA Compliance: The seed industry's alternative to removing tassels by hand is to remove them by machines which cut or pull tassels. However, this process reduces the yield of seed fields by removing more leaves than does manual detasseling. The resulting decrease in seed field yields would raise seed production costs and increase costs to farmers at a time when they are undergoing serious cost-price pressure and therefore reduced net income. However, the increased costs and burdens associated with the FLCRA and other federally-mandated employment costs, including unemployment insurance, minimum wages and increased Social Security, may impel the industry to turn increasingly to this alternative.

Loss of Teenage Employment Opportunities: Potential elimination of hand detasseling due to burdensome registration requirements would deprive hundreds of thousands of people, primarily teenagers, of meaningful, productive work at a loss of an estimated $46,400,000 in payroll. This is perhaps the most serious side effect of the FLCRA which, as applied by the Department of Labor, improperly classes local young people, living at home and working in a necessary but temporary job, as migrant laborers. It would be ironic if the Department of Labor were permitted to "protect" these laborers out of their jobs.

There has been no demand or demonstrated need for regulation, registration, control or enforcement by the federal government of any of the seed production activities described here. No benefits accrue to the workers or their families from the Department of Labor's current enforcement efforts. These efforts only engender delay, confusion and expense in both the public and private sector, and create an abiding conviction in the minds of workers involved that the federal government regulates simply for the sake of regulation; the imposition of the Farm Labor Contractor Registration Act upon these workers without any foreseeable benefit spurs the feelings already held by those citizens that government is insensitive to waste and over-regulation.

IN CONCLUSION, temporary workers employed in the breeding and production of seeds receive no benefits from application of the FLCRA to their employers. At stake are productive jobs for thousands of young people and the industry's ability to supply highly productive seeds to farmers at reasonable costs. Potential loss of an estimated $46,400,000 payroll to local communities and increased farm production costs would be the ultimate results of this attempt to regulate a segment of our population which does not want or need federal intervention.

Pioneer respectfully urges the Committee to adopt amendments which properly restrict the definition of the term "migrant worker" and to expressly exempt the day-haul operations of the seed industry from the scope of this Act.

U. S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
Washington, D.C. 20210

January 6, 1978

Your letter of December 13, 1977, in regard to the Farm Labor Contractor Registration Act and its application to seed producers/processors has been referred to this office for response.

The Farm Labor Contractor Registration Act (copy enclosed) requires "any person, who for a fee, either for himself or on behalf of another person, recruits, solicits, hires, furnishes, or transports migrant workers ... for agricultural employment" to register as a farm labor contractor. Thus, a "person" must register to engage in farm labor contracting activities, unless one of the specific exemptions listed in Section 3(b) of the Act applies. The term "person" as defined in Section 3(a) of the Act "includes any individual, partnership, association, joint stock company, trust, or corporation." Therefore, any person who engages in any of the activities named in the statutory definition must register as a farm labor contractor unless specifically exempt. An October 3, 1977 opinion letter, as well as an October 17, 1977 opinion letter, also enclosed, explain in detail the application of some possible exemptions to both a processor and its employees engaged in the named activities.

Seed producers and processors generally provide such things as financing, seed and fertilizer, and the growers generally provide the land, labor and equipment to bring the crops to maturity. The processor usually makes arrangements for, and supplies, the labor to detassel and rogue the crops, which activities also inure to the benefit of the growers. It is the Department's position that where a processor and a number of growers operate in concert, in effect, in a joint venture to produce seed, that the processor or seed producer cannot qualify for exemption under Section 3(b)(2) of the Act.

Since Section 3(b)(2) is applicable only where a processor supplies migrant workers "solely" for the processor's own operations, the fact that the growers also receive the detasseling and roguing services performed by the workers supplied by the processor would preclude applicability of this exemption to the processor. The enclosed opinion letter dated August 27, 1977, further delineates the Department's position in this area.

Additionally, as discussed in detail in the enclosed opinion letter dated October 3, 1977, a corporate processor cannot be considered as personally engaged in supplying farm labor employees solely for the processor's own operation because of the meaning of the word "personally."

Where managers and field supervisors perform farm labor contracting activities for a seed corn producer or processor, as a principal or major function of their overall job, the standard in Section 3(b)(3) of the Act for such activity performed "on no more than an incidental basis" may be exceeded and it would then be necessary that these employees register under the Act. However, the application of this exemption would depend on the facts in a given situation. Further, even if a corporation succeeds in obtaining the exemption provided by Section 3(b)(2), whether certain of its officials may or may not be required to register as farm labor contractors will be determined under Section 3(b)(3) of the Act as discussed in the enclosed October 3rd and December 8th opinion letters.

Employees, such as company bus drivers who are recruited or hired by field supervisors, are normally utilized to transport workers to the fields daily. These employees in performing one or more named activities are farm labor contractors or farm labor contractor employees as defined by Regulation 40.2(m), copy enclosed.

Farm Labor Contractors whose farm labor contracting operations are entirely intrastate but extend beyond the 25-mile radius or run for more than 13 weeks per year would not be eligible for the exemption under Section 3(b)(4). Further, a processor whose farm labor contracting operations are interstate would not qualify for the exemption under any circumstances.

I appreciate your interest in this matter.

Sincerely,

HERBERT J. COHEN
Assistant Administrator
Wage and Hour Division

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
Wage and Hour Division
WASHINGTON, D.C. 20210

OCT 5 1977

This is in response to your letter of August 18, 1977 regarding the Department of Labor's policy on the registration of farmers as farm labor contractors under the Farm Labor Contractor Registration Act, as amended. Your particular concern is with the Department's interpretation of the exemption from registration for farmers under Section 3(b)(2) and for the farmers' full-time or regular employees under Section 3(b)(3).

By adding the word "personally" in Section 3(b)(2) in 1974, Congress apparently narrowed the applicability of this exemption to an individual. Thus, this section would apply to a sole proprietorship whose owner performs any of the named farm labor contracting activities in person and "solely for his own operation." With regard to a partnership, since each partner is both a principal and an agent, each partner who performs any of the covered farm labor contracting activities solely for his own operation would be acting "personally". The applicability of the term "personally" is thus clear with respect to a sole proprietorship or a partner of a partnership.

Although the term "person" as defined in the Act includes partnerships, associations, joint stock companies, trusts or corporations, as well as individuals, it is apparent that each such entity must be viewed in a different light insofar as the application of Section 3(b)(2) is concerned. These entities are not entitled to the exemption under Section 3(b)(2) in their own right because they cannot act personally but only through an agent or representative. However, if a farmer is a corporation, the term "personally" may apply if the corporation is under the effective control of an individual whose authority is equivalent to that of a sole proprietor, and if that individual acts in person with respect to the farm labor contracting activities for the corporation. In such case, the exemption could apply.

Under the principles stated above, the application of Section 3(b)(2) to a farmer personally engaged in farm labor contracting activities solely for his own operation appears clear with respect to sole proprietorships, partnerships and corporations which are under the effective control of an individual. Any changes in the application of the Act to include corporations which cannot act personally would require, in my opinion, legislative action on the part of the Congress. The above principles were adopted only after careful consideration and are believed to follow Congress' intent in adopting the language of the statute.

WH-433

An employee of an exempt person, within the meaning of Sections 3(b)(1) or 3(b)(2) of the Act is not automatically entitled to claim the exemption provided in Section 3(b)(3) unless the employee also meets the requirements of Section 3(b)(3) of the Act.

To be entitled to the exemption provided by Section 3(b)(3), a person must (1) be an employee of a farmer or other person referred to in Sections 3(b)(1) or 3(b)(2); (2) be a full-time or regular employee of such person; (3) engage in any of the covered farm labor contracting activities referred to in Section 3(b) solely for that employer and (4) participate in such activities "on no more than an incidental basis."

The phrase "on no more than an incidental basis" is not defined by the Act. The legislative history makes it clear that it was the intent of Congress that only those full-time or regular employees who utilize only a limited portion of their time for farm labor contracting activities could qualify for the exemption under Section 3(b)(3). As stated on pages 7 and 8 of the Senate Report No. 93-1295: ". . . While employment relationships vary, it is the Committee's intent that foreman and similar bona fide employees will not have to register as Farm Labor Contractors if it can be shown for example, that they are full-time and permanent employees of an employer who utilizes a limited portion of their time for activities as defined in Section 3(b) of the Act."

There are many kinds of participation in covered farm labor contractor activities referred to in Section 3(b) by full-time or regular employees of farmers or other persons referred to in Section 3(b)(1) or 3(b)(2). Engagement in such farm labor contractor activities may be a principal or a peripheral function as related to the employee's overall duties. There also may be seasonal fluctuations. Yet such activities may be part of the employee's regular or assigned duties which are performed on a regular and recurring basis.

The Department in considering the application of the Section 3(b)(3) exemption, takes into account all of the above factors. No single element would control and all the various related factors would be considered including the relationship of the amount of time spent performing farm labor contracting activities as compared to the total work time.

In addition, the importance of the farm labor contractor activities must ulitimately be determined in relation to the totality of the employee's duties based on the time, frequency, nature and indispensability of the employees in performing such duties. Thus, to be more than incidental the farm labor contracting activities need not be the only duties of the employee. It is sufficient to be more than "on an incidental basis", in our opinion, if the farm labor contracting activities are one of the major or principal functions of the individual's job.

While the Farm Labor Contractor Registration Act provides sanctions for the farm labor contractor who utilizes undocumented workers, we take exception to your statement to the effect that is the chief purpose of the Act. The Act guarantees to all covered workers, the protection and terms and conditions of employment stipulated by the statute. Section 6(f) of the Act is vigorously enforced by the Division, but not without equal attention to all other facets of the law.

It is anticipated that the new draft Interpretations, Part 41 will be published in the Federal Register within the next several months. Anyone desiring to comment on the proposed Part 41 may do so at that time.

Sincerely,

Xavier M. Vela
Administrator

O's GOLD

O's GOLD Seed Company

MAR 10 [illegible]

Telephone 319/347-6633 Parkersburg, Iowa 50665

March 3, 1978

Honorable Ike F. Andrews
House of Representatives
Washington, D.C. 20515

ATTN: SUBCOMMITTEE ON ECONOMIC OPPORTUNITY OF THE HOUSE COMMITTEE ON EDUCATION AND LABOR

Dear Representative Ike F. Andrews:

I am seeking your support of the resolution by the American Seed Trade Association, Inc. opposing the United States Department of Labor's efforts to compel seedsmen and their managers and other employees to register as "farm labor contractors" under the Farm Labor Contractor Registration Act. I feel legislative action should be taken as soon as possible in exempting the seed industry from this Act, for it places an unnecessary compliance burden on the seed industry with no public benefit, not to mention the added cost to the Government.

For your information, we higher only local high school and college people on summer vacation for roguing and detasseling our seed corn. They are employed for only about eight weeks.

Your help in this matter would be greatly appreciated.

Sincerely yours,

O'S GOLD SEED COMPANY

Wayne C. Dudley

Wayne C. Dudley
President & Chief Executive Officer

WCD:dko

Proven Profit Hybrids

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THE EMBRO SEED CO., *Inc.*

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Office and Warehouse 101 Chouteau Ave.

March 10, 1978

Congressman Ike F. Andrews, Chairman
Subcommittee on Economic Opportunity
House Committee on Education and Labor
228 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Andrews:

We take this opportunity to express our support of the movement to exempt the Seed Industry from the Farm Labor Contractors Act.

With more than four decades of experience in the seed business, I feel qualified to make the judgement that the Department of Labor's interpretation of the Act with regard to registering farm labor contractors is and will continue to be detrimental to the Seed Industry and the farmers served by the Seed Industry.

Thank you and your Committee for your consideration and support of the proposed Amendment to exempt the Seed Industry from this Act.

Respectfully,

THE EMBRO SEED CO., INC.

D. Hal Walton

D. Hal Walton
President

DHW:md

WE WARRANT TO THE EXTENT OF THE PURCHASE PRICE THAT SEEDS WE SELL ARE AS DESCRIBED BY US ON OUR CONTAINER WITHIN RECOGNIZED TOLERANCES. Our Liability, whether contractual or otherwise, is, to the extent permitted by law, limited in amount to the purchase price of the seeds. Seeds not accepted under these terms and conditions must be returned at once in original unopened containers and the purchase price will be refunded.
THE EMBRO SEED CO., INC.

MILLER SEED COMPANY

1540 Cornhusker Highway
P.O. Box 81823
Lincoln, Nebraska 68501
Phone (402) 432-1232

March 10, 1978

Congressman Ike Andrews
Subcommitte on Economic Opportunity
Cannon House Office Building
Room 228
Washington, D.C. 20515

Dear Congressman Andrews:

We urge you to support the legislation to exempt the seed industry in regard to registration, finger printing of people used in the roguing and detasseling crews for seed production.

The Farm Labor Contractor Registration Act as it now exist will do much to add to the difficulty of producing the quality of seed needed in agriculture. We have enough problems in this regard without having government adding to our problems. Nature does not wait for government and government employees to make decisions and approval of ones operations. I am sure none of the bureaucrats have absolutely no knowledge of what is involved in seed production and how important it is.

Yours very truly,

MILLER SEED COMPANY

Glenn E. Miller

Glenn E. Miller
President

GEM:vs

Illinois Seed Dealers Association, Inc.

508 South Broadway, Urbana, Illinois 61801
Telephone: (217) 367-4053

ISDA

President
Joseph Mountjoy
Mountjoy Hybrid Seed Co.
Atlanta, IL 61723

Vice-President
Carrol Bolen
Pioneer Hi-Bred International, Inc.
Princeton, IL 61356

Secretary
Fred Schneider
Schneider Seed, Inc.
Jerseyville, IL 62052

Treasurer
John Noble, Jr.
Noble Brothers
Gibson City, IL 60936

Past President and Director
Jesse Smart
Funk Seeds International
Bloomington, IL 61701

Director
John Golden
Golden Seed Co.
Cordova, IL 61242

Director
Robert Troutman
Champaign County Seed Co.
St. Joseph, IL 61873

Executive Secretary-Treasurer
Alvin L. Lang
508 South Broadway
Urbana, IL 61801

Ass't Secretary-Treasurer
Kay Clark
508 South Broadway
Urbana, IL 61801

March 10, 1978.

Congressman Ike F. Andrews, Chairman,
Subcommittee on Economic Opportunity,
House Committee on Education and Labor,
228 Cannon House Office Building,
Washington, D. C. 20515

Dear Sir:

This is a letter of protest to the Labor Department's decision to include the Detasseling Labor used by the Hybrid Seed Corn Industry in the Migrant Labor Classification. The registration, processing, certification and additional insurance expense would approximately double the cost of detasseling Hybrid Seed Corn. This would add an average of $5.00 per bu. to the retail cost of Hybrid Seed Corn to the farmer and would actually in practice accomplish nothing in a positive way.

In a negative way, it would, in a few years, eliminate this hand work for 80,000 to 100,000 teenage workers in the State of Illinois. It would surely seem that with the teenage unemployment problem, this amendment would be absolutely counter-productive. For most of the rural detasseling help, this is the only work available during the Summer.

The whole "Regulatory Syndrome" that emanates from Washington is rapidly diminishing the choice of individual citizens. When choice is diminished, individual Liberty is infringed. With individual Liberty infringed, individual initiative begins to erode, and individual initiative is the one great asset that we have here in America that sets us apart from the rest of the World.

Please register our firm opposition to this attempt to legislate Detasseling Labor as a form of Migrant Labor, which it is not.

Sincerely yours,

Joseph B. Mountjoy, President,
Illinois Seed Dealers Assoc.

P·A·G

P-A-G SEEDS

P.O. BOX 9480
MINNEAPOLIS
MINNESOTA
55440

March 20, 1978

Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Bldg., Room 228
Washington, D.C. 20515

Honorable Congressman Ike Andrews:

P-A-G Seeds, a major producer and distributor of hybrid seed corn and sorghum in the United States, recommends that the Hybrid Seed Industry be exempted from the Farm Labor Contractor Registration Act.

The nature of the seed industry at the time of detasseling demands fast, local, "on the scene" flexibility to harvest a quality crop.

Seed production locations are involved in the detasseling operation for about 20 days during the summer months. To comply with the present Farm Labor Contractor Registration Act will be costly and inconvenient. The Farm Labor Contractor Registration Act is not necessary to protect the high school and college age students involved, and in fact, it is counter-productive to their best interests. Regulations such as the Farm Labor Contractor Registration Act discourage the hiring of these young people and encourages the producer to purchase additional machinery to do the work done by them. In addition, these students are not migrant workers, which the Act was intended to protect. These students return to their family domicile at the end of each day, and are not housed by seed production locations.

We strongly support the addition of new paragraph (10) following the present paragraph (9) section 3(b) of the Farm Labor Contractors Registration Act as attached.

Your endorsement of our recommendation will be appreciated.

Sincerely,

R. N. Endres

Richard N. Endres
General Manager

RNE:lg

Attachment

FARM LABOR CONTRACTOR REGISTRATION ACT
ADDITIONAL PROPOSED AMENDMENT
TO PROVIDE SPECIFIC SEED INDUSTRY EXEMPTION

A new paragraph (10) is hereby added following paragraph (9) of Section 3(b) of the Act, reading as follows:

(The term "farm labor contractor" shall not include:)

(10) any person, with respect to such person's activities in the business of producing, processing or distributing seeds for planting or distribution for planting (or in related or incidental activities, including research), or any person who furnishes workers to or grows crops under contract for such person, or any employee of either such person, if all of the seasonal employees used in the business, who are customarily engaged in agricultural employment for more than thirteen weeks per year, can regularly return to their permanent places of domicile each day after working hours.

A STATEMENT OF

THE NEBRASKA SEEDS MENS ASSOCIATION

March 20, 1978

To: Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Building
Room 228
Washington, D.C. 20515

Dear Congressman Andrews:

The Board of Directors of the Nebraska Seedsmen's Association in its meeting held March 14, 1978, passed a resolution that the Association encourage passage of the proposed amendment to the Farm Labor Contractor Registration Act (FLCRA) to provide specific seed industry exemption. This proposed amendment is as presented to your committee by the American Seed Trade Association which reads as follows:

FARM LABOR CONTRACTOR REGISTRATION ACT
ADDITIONAL PROPOSED AMENDMENT
TO PROVIDE SPECIFIC SEED INDUSTRY EXEMPTION

A new paragraph (10) is hereby added following paragraph (9) of Section 3 (b) of the Act, reading as follows:

(The term "farm labor contractor" shall not include:)

(10) any person, with respect to such person's activities in the business of producing, processing or distributing seeds for planting or distribution for planting (or in related or incidental activities, including research), or any person who furnishes workers to or grows crops under contract for such person, or any employee of either such person, if all of the seasonal employees used in the business, who are customarily engaged in agricultural employment for more than thirteen weeks per year, can regularly return to their permanent places of domicile each day after working hours.

It is the fear of this Association that with the seed industry required to operate under the "FLCRA" that there will be detrimental economic adjustments on local economies and seed companies within the state of Nebraska. For instance, companies producing seed corn will eventually be forced to cut down on the hiring of several thousands of young people throughout our state for corn detasseling. This loss of income for all the youth jobs lost will cut family incomes, payment of school costs (including college educations) and add to youth unemployment due to loss of job opportunity. It also seems the law should not really apply to these young people because they are not "migratory". They report for work and are home each night.

The law and its regulations we believe to be impractical within the setting of how these detasselers and other part time helpers are hired and carry out their work as residents of the localities where they work. In addition, to work within the regulations will be costly to the seed companies resulting not only in higher cost of product but in speeding up the adopting of known mechanical means to replace the seasonal part time help and thus diminished job opportunities.

We urge your favorable action in the passage of the subject amendment.

Very truly yours:

Association President	Association V. Pres.	Director (for other directors)
Jim Girardin	William Monke	Mylan E Ross
Jim Girardin President Arrow Seed Co. Broken Bow, NE	William Monke Vice President Fontanelle Hybrids Nickerson, NE	Mylan E. Ross Exec. V. President Tekseed Hybrid Co. Tekamah, NE

MER:jn
cc

LOWE
SEED COMPANY

EDWARD J. STRASMA, PRESIDENT

EXECUTIVE OFFICES: 217 SOUTH WEST AVENUE • BOX 1685 • KANKAKEE, ILLINOIS 60901
(815) 933-4471

March 21, 1978

Congressman Ike F. Andrews, Chairman
Subcommittee on Economic Opportunity
House Committee on Education and Labor
228 Cannon House Office Building
Washington, D. C. 20515

Dear Congressman Andrews:

It has come to our attention that there is legislation pending which would require hybrid seed corn companies to fingerprint and register job applicants before these companies can transport detasselers to a seed cornfield.

The American Seed Trade Association has registered opposition to the efforts of the Department of Labor to compel seedsmen, their managers and other employees to register as farm labor contractors. Lowe Seed Company wholeheartedly endorses and supports the resolution submitted by the American Seed Trade Association Board. We believe it to be in the interest of the agricultural industry and consequently, to those who process food for human consumption, that seed corn companies not be included in this Farm Labor Contractor Registration Act.

Respectfully submitted,

LOWE SEED COMPANY

Edward J. Strasma
President

LEU/gs

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Phone: 315+596-6398

ROBSON SEED FARMS
Corporation
HALL, NEW YORK 14463

SENECA HYBRIDS

MAR

March 21, 1978

Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Building
Room 228
Washington, D.C. 20515

Re: 1978 Amendments to Farm Labor
Contractor Registration Act

Dear Congressman Andrews:

We have been informed that the U.S. Department of Labor now considers local seasonal agricultural workers to be migrants and companies that employ local residents on a seasonal basis to be farm labor contractors. This determination causes many problems for both the employer and the employee.

Requiring corporations that employ only local residents to be registered as farm labor contractors is unnecessary. In most cases the size of operation places the company under other existing federal labor laws. Minimum wages, record keeping and other employer-employee matters are now covered by existing laws. In this case, registration as a farm labor contractor does not help either the employer or the employee.

The extra regulations placed on seed companies and the contract seed grower will make seed production less desirable and therefore will increase the growing costs. It makes little sense that one section of government asks industry and the public to keep costs and prices down, while another segment of government issues needless regulations which raise the costs of doing business.

These needless regulations also greatly increase the cost of government. In addition, they increase inflation and cause the hiring of additional inspectors, auditors and investigators to carry out and enforce these regulations. Bureaucracy within government continues to spread, regardless of promises of present or past Presidents to decrease the cost of government to the taxpayers.

The determination that permanent area residents be defined as migrant workers creates other very interesting problems. One of our interpretations of the DOL rulings is that if a parent of a student calls us to place his child in our employ the parent must register as a "farm labor contractor". It is also very possible that the DOL classification of a migrant may be extended to other State and Federal agencies. An interesting problem then arises. If a home has five or more people living in it and one person works part time for a farm that home must be classified as a migrant labor camp and be subject to all health and building codes.

We point out that neither we nor the seed industry is asking to be exempted from the current laws covering the use of actual interstate migrant labor. We are asking that the American Seed Trade Association amendment be passed. We also ask you and your committee to support H. R. 10053 (the McFall Bill) and H. R. 8894 (the Sarasin Bill). These bills include a number of detailed amendments which will help the position of all agricultural growers.

NOTICE TO BUYER Robson Seed Farms, Corp. warrants that seeds and plants it sells will conform to the label description as required under State and Federal Seed Laws IT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR PURPOSE, OR OTHERWISE, WHICH WOULD EXTEND BEYOND SUCH DESCRIPTIONS, AND IN ANY EVENT ITS LIABILITY FOR BREACH OF ANY WARRANTY OR CONTRACT WITH RESPECT TO SUCH SEEDS OR PLANTS IS LIMITED TO THE PURCHASE PRICE OF SUCH SEEDS OR PLANTS. ROBSON SEED FARMS, CORP FURTHER LIMITS TO THE PURCHASE PRICE ANY LIABILITY OF ANY KIND ON ACCOUNT OF ANY NEGLIGENCE WHATSOEVER ON ITS PART WITH RESPECT TO SUCH SEEDS OR PLANTS By acceptance of the seeds or plants herein described the buyer acknowledges that the limitations and disclaimers herein described are conditions of sale and that they constitute the entire agreement between the parties regarding warranty or any other liability

We thank you for your time and hopefully for your cooperation. The American seed industry is vital to our country's and our world's agricultural progress. We ask that we not be subject to unnecessary legislation and rulings that accomplish little except to make our business more complicated and our products more expensive.

Sincerely yours,

ROBSON SEED FARMS CORPORATION

Richard O. Robson

Richard O. Robson
Executive Vice President

ROR/vf

Copies to:

President Carter
Congressman William F. Walsh
Congressman Barber Conable, Jr.
Congressman Frank Horton
Honorable Secretary of Labor, Ray Marshall
Harold Loden, Executive Secretary American Seed Trade Association
John P. Manwell, Legal Council American Seed Trade Association

Associated Hybrid Producers
Cooperative Service
(INC.)
An Association of Independent Producers
of Quality Hybrid Seed Corn

PHONE HUDSON: 319-988-4593
Cable Address: Agriport

OFFICE OF THE SECRETARY
Hudson, Iowa 50643

March 20, 1978

Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Bldg.
Room 228
Washington, D.C. 20515

Dear Congressman Andrews:

This association represents a group of about 20 of the intermediate sized companies producing hybrid seed corn. They range from strictly family operations producing a few hundred acres of seed to corporations with plants in as many as four States, and producing seed on several thousand acres.

We are greatly concerned about the announced application of the Farm Labor Contractor Registration Act to labor employed on a seasonal basis to do detasseling work during the summer, and to do sorting work during the harvest season.

The members of this organization employ several thousand persons, largely high school age boys and girls, to do detasseling work for a period of 2 to 5 weeks during the summer months. These people work in crews, some of them family groups, some organized by high school teachers, others working directly under the supervision of company employees. This work furnishes summer employment and work training to thousands of young people who otherwise would have no employment, no income and no work training during the out-of-school months.

The companies which are members of this organization employ about 2,500 detasselers and supervisors during this summer period. If the Farm Labor Contractor Registration Act is applied to detasseling operations, most of these companies will immediately go to mechanical detasseling units, eliminating at least 1,200 of the jobs mentioned above.

During the harvest season sorters are employed on somewhat the same basis, but, in smaller numbers. These are largely women who otherwise would have no employment and no income during this period. Mechanical huskers and other equipment will be installed and these jobs eliminated if this Act is made applicable to these jobs.

Con't.

In all cases these persons stay at home, they supply their own transportation or in some cases are transported to the job sites, they work under strict supervision and are paid well. We do not believe it was the intent of Congress that this Act be applied to agricultural labor of this type, and we request that the proposed amendment or one similar be adopted in order to clarify this situation and prevent the Department of Labor from applying the provisions of this Act to the production of agricultural seeds.

Through hundreds of restrictions, the raising of the minimum wage and other means Congress and the Bureaucracy of goverment have made it almost impossible for young men and women of high school and college age to obtain Summer jobs. Application of this Act to seed production, and, especially, hybrid seed corn production, will eliminate other thousands of jobs, increase the necessity of educational subsidies, raise the crime rate of unemployed young people who have nothing to do other than to get into trouble,lower the incomes of families, and generally further disturb working conditions for people who need, but, can not find employment during the Summer season.

Enclosed is a proposed amendment which we feel is mandatory if this Act is to be made operable, for if something like this amendment is adopted, thousands of young people are going to be without detasseling jobs this Summer. We urge your adoption or inclusion of this amendment in the Farm Labor Contractor Registration Act.

At the same time, we urge your support for HR 10053 (the McFall Bill) and also, HR 8894 (the Sarasin Bill), which include clarifying amendments which will make the employment of labor in the seed production industry much more practical. If these are not adopted, we are going to find the costs of seed produced in the U.S. soaring to levels that may well rule out the sizable export markets we have been able to build through a period of years.

Very truly yours,

Geo. M. Strayer

George M. Strayer, Sec'y.
ASSOCIATED HYBRID PRODUCERS

GMS:eam
enclosure

FARM LABOR CONTRACTOR REGISTRATION ACT
ADDITIONAL PROPOSED AMENDMENT
TO PROVIDE SPECIFIC SEED INDUSTRY EXEMPTION

A new paragraph (10) is hereby added following paragraph (9) of Section 3(b) of the Act, reading as follows:

(The term "farm labor contractor" shall not include:)

(10) any person, with respect to such person's activities in the business of producing, processing or distributing seeds for planting or distribution for planting (or in related or incidental activities, including research), or any person who furnishes workers to or grows crops under contract for such person, or any employee of either such person, if all of the seasonal employees used in the business, who are customarily engaged in agricultural employment for more than thirteen weeks per year, can regularly return to their permanent places of domicile each day after working hours.

Burrus Seed Farms, Inc.
Quality hybrid seed corn

217/997-5511
RURAL BOX 22

ARENZVILLE, ILLINOIS 62611

March 16, 1978

Congressman Ike Andrews
Subcommitte on Economic Opportunity
Washington, D.C.

Dear Sir:

I recommend that you strongly consider the proposed amendment to the Farm Labor Contractor Registration Act that would provide specific seed industry exemption.

Most seedsmen employ local youth who reside at home during employment. To treat these in the same manner as migrant workers would be foolish. It would create unnecessary regulation, cost of administration and cost of production.

I would also appreciate your support of HR 10053 (the McFall Bill) and Hr 8894 (the Sarasin Bill).

Thank You,
BURRUS SEED FARMS, INC.

Todd Burrus
Todd Burrus

FARM LABOR CONTRACTOR REGISTRATION ACT
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MEMBER OF ILLINOIS CROP IMPROVEMENT ASS'N .... MEMBER OF ILLINOIS FOUNDATION SEEDS, INC.
MEMBER OF AMERICAN SEED TRADE ASSOCIATION

SEEDS
SIEBEN HYBRIDS

Seed Corn -- Field Seeds -- Ag. Chemicals

SIEBEN HYBRIDS
PHONE AREA CODE 309—944-3501
GENESEO, ILLINOIS 61254

3-14-78

Congressman Ike Andrews —

Enclosed is a copy of the letter we sent to congressman Railsback Re. HR 10053 (McFall) and HR 8894 (Sarasin)

We heartily support the American Seed Trade position regarding the proposed legislation and hope you will, too.

Sincerely,
A G Sieben, Partner
Sieben Hybreds

MEMBER OF ILLINOIS CROP IMPROVEMENT ASS'N. —— MEMBER OF ILLINOIS [illegible]
MEMBER OF AMERICAN SEED TRADE ASSOCIATION

Seed Corn – Field Seeds – Ag. Che

SEEDS
SIEBEN HYBRIDS

SIEBEN HYBRIDS

PHONE AREA CODE 309—944-3501

GENESEO, ILLINOIS 61254

Copy

February 28, 1978

The Honorable Tom Railsback
House Office Building
Washington, D.C. 20510

RE: H.R. 10053 (McFall)
H.R. 8894 (Sarasin)

Dear Representative Railsback:

We are writing regarding hearings which are currently being held by the Subcommittee on Economic Opportunity of the House Committee on Education and Labor on ammendments to the Farm Labor Contractor Registration Act, Ike F. Andrews, Chairman. Record to close March 23.

Enclosed is the ASTA letter we received in connection with this matter.

We are opposed to the classification of detasselers as "migrant workers" and would appreciate your support of the above bills as well as the ASTA position on the matter for several reasons:

1. In the case of smaller seed companies, almost all detasselers are residents of the communities where the companies are located. They are in no way "migrant workers".
2. Seed companies in your district employ several hundred people ages 14-17 during July and August. Often this is the first "job" for a young person and is a valuable,rewarding experience. We are often used for references later by these employees.
3. The difficulties in compliance outlined in the ASTA letter would probably mean that we will have to use mechanical devices or deal with true migrant worker organizations.
4. We fail to see any benefits for the employees, the industry, or our customers as a result of this legislative interpretation.

5. IT DOES NOT APPEAR THAT THE SUB-COMMITTEE HAS MEMBERS WHO REPRESENT MAJOR SEED PRODUCING AREAS OF THE NATION (Illinois, Iowa, Indiana, Ohio, Nebraska, etc.).

Your attention to this matter will be appreciated. If we can be of assistance to you, call on us at any time.

Sincerely,

Channing A. Sieben, Partner

Trisler

3/16/78

Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Bldg.
Room 228
Washington, D. C. 20515

Dear Sir:

As manager of Trisler Seed Farms, Inc. of Fairmount, Illinois I would like to express our companies view on the "Farm Labor Contractor Registration Act."

"We definitely support amendments that would eliminate the Hybrid Seed Corn industry from the controls under this act".

We will greatly appreciate your efforts in helping the Hybrid Seed Corn Industry in the above matter, as the act as we see it; is cumbersome in every respect; will be costly to the consumer due to many increased costs that will have to be made, and will not increase the quality of products that will be produced.

Thank you very much.

Sincerely,

Fred A. Cast
Gen. Mgr.
Trisler Seed Farms, Inc.
RR #1
Fairmount, Ill. 61841

TRISLER SEED FARMS, INC. / Fairmount, Illinois 61841 / Phone AC 217-288-9301

FARM LABOR CONTRACTOR REGISTRATION ACT
ADDITIONAL PROPOSED AMENDMENT
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CARGILL
SEED DEPARTMENT

15407 McGinty Road
Minnetonka, Minnesota
Mail Address: Box 9300
Minneapolis, Minnesota 55440

MAR 27 1978

March 20, 1978

Congressman Ike Andrews
Subcommittee on Economic Opportunity
Cannon House Office Building, Room 228
Washington, D.C. 20515

Honorable Congressman Andrews:

Cargill Seeds, a division of Cargill, Incorporated, wishes to express our support for the new paragraph (10) to be added following Paragraph 9, Section 3(b) of the Farm Labor Contractor Registration Act, as attached.

We produce and distribute seed in an eleven-state midwestern area, and feel the Act should apply to genuine third-party contractors. The seasonal employees that we, as Cargill Seeds, employ are primarily high school and college students who are employed during the summer months to rogue offtype corn plants from the field and detassel corn.

The inclusion of a seed producer under the Farm Labor Contractor Registration Act adds much additional red tape to our business procedure and does not add protection to our type of seasonal workers. The Act, in my opinion, was designed to protect the migrant worker, who is much different than the type of employee we seek and employ.

We would appreciate your consideration of adding Paragraph 10 to the Farm Labor Contractor Registration Act.

Yours very truly,

Richard W. Johnson,
General Manager

RWJ/ap

Attachment

FARM LABOR CONTRACTOR REGISTRATION ACT
ADDITIONAL PROPOSED AMENDMENT
TO PROVIDE SPECIFIC SEED INDUSTRY EXEMPTION

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MAR 27 1978

Tracys
ROUTE 1 • JANESVILLE, WISCONSIN 53545 • PH (608) 752-7841

March 21, 1978

The Honorable Ike F. Andrews
House of Representatives
Washington, D.C. 20025

Dear Mr. Andrews,

I urge your support of Bill H.R. 10053 (The McFall Bill) and H.R. 8894 (The Sarasin Bill) which are concerned with changing some recent extensions of interpretation of the farm labor contractor registration act. As it stands these extensions have the effect of throwing all seasonal labor together with migrant labor. This creates new and unnecessary burden for farm seed production and research organizations hiring seasonal local labor, such as the example of seed corn producers hiring high school students for detasseling in the summer. This extension would force further mechanization of the detasseling process and result in the loss of one of the only summer jobs available for rural teenagers. This extension provides no public benefit, imposes an unnecessary compliance burden on the seed industry, and goes beyond any reasonable interpretation of the law. Please support H.R. 10053 and H.R. 8894.

Sincerely,

ALAN TRACY

AT/ah

THE SHORT SEASON CORN PEOPLE

Jacques SEED CO.

SEED CORN
ALFALFA
SOYBEANS
SORGHUM
SUNFLOWERS

Prescott, Wisconsin 54027 • Telephone 715/262-3223 • TELEX 297-441 (JACQUES PSCT)

March 6, 1978

Representative Ike F. Andrews
Chairman of the Subcommittee on Equal Opportunity
Equal Employment Opportunity Commission
Washington, District of Columbia 20506

Re: Appeal for support of changes to the Farm Labor Contractor Registration Act

Dear Mr. Andrews:

This letter is to present our strong appeal to you and to encourage you to do everything within your means to bring about passage of legislation to restore what we believe to be the original intent of Congress in the enactment of the Farm Labor Contractor Registration Act. You and your committee have been provided with statements and information demonstrating that the Department of Labor has interpreted the present legislation and enforced it in such a manner as to apply the law far beyond the reasonable reading of its provisions and in jobs and industries that clearly do not need Federal or State supervision.

We at Jacques Seed Company aggressively support the Resolution of the American Seed Trade Association; copy attached. We have studied the various Bills and we ask that you dedicate your good efforts to cause passage of legislation that clean up the over zealous interpretation of the Department of Labor. Since it appears that the Department of Labor desires and is able to interpret the law at will, we urge legislation to specifically exempt seed production activities from FLCRA.

I will refrain from prolonging this appeal with our views on the ever growing size and cost of Federal government and its cancerous assumption of regulation and control of nearly every facet of our commerce and life. We do, however, feel that the problem is so severe as to create an attitude in the people that we, in fact, can't do anything about it and to create a cost of government that consumes over one-third of our Gross National Product.

Our company was audited by the Department of Labor in 1977 under FLCRA and obviously we were in violation since we were not aware that we were covered by the law. The Department of Labor is now auditing another of our locations and as yet we have no notice of penalty. In addition to the power of its interpretations, the Department of Labor seems to be holding penalties in abeyance to force compliance.

MAIN OFFICE AND PLANT
Prescott, Wisconsin

Cuba City, Wisc. 608/744-2311
Schaller, Iowa 712/275-4744
Lincoln, Ill. 217/732-6353
Hastings, Minn. 612/437-1158

Our company has spent considerable funds to research this legislation and to work for correction of the situation. We strongly support the law as it relates to traditional migrant labor problems but we feel the Congress needs to prevent the Department of Labor from expanding this intent at will. We do intend to comply with FLCRA in 1978 since we feel the cost to test the enforcement in the courts or the unknown penalties may be prohibative.

We have found our efforts to be difficult even in complying with FLCRA. We have attended and been advised of meetings in Illinois, Iowa, Nebraska and Minnesota dealing with the extension of the law to the seed industry. It is clear that no one really knows what the law really means to seed people, how to comply and live within the law or why it is necessary. The situation is a futile abortion. I have personally talked with as many as five Department of Labor people and six state Job Service people in three states. In most specific questions the answer from the Federal people is to talk to the State people or the Wisconsin people encourage us to deal with another state while the other state does the reverse. In a simple attempt to get simple answers our company has asked seven of these public servants to come to Prescott to meet with us and each other so that we might comply in 1978. These people are nearly unanimous in their expression of the opinion that the FLCRA should never be extended to our industry but they appear unable or unwilling to work within their agencies to correct the situation. An amendment is necessary.

Our company alone will employ approximately 7,000 students (not migrants) this summer to detassel about 16,000 acres of seed corn in Illinois, Iowa, Nebraska, Minnesota and Wisconsin. We will spend over $1,000,000 in Ag Payroll. About 300 supervisors and 150 buses will be used in the six week period. Over 300 individual contract growers will also be subjected to the law. We fear that our growers will simply elect not to grow seed corn or the incentive cost to do so will increase. We fear that the local teacher that works for us as a supervisor (not a contractor) will object to being fingerprinted and having a physical and simply not work or require higher wages. We know that the various state agencies are unable and not prepared to handle the volume of corporation applications, employee applications, vehicle registration, etc. We fail to see any benefit to society, economy, industry or anyone in this regulation. These detasselers are local sons and daughters and they return to their homes each night. These jobs are important to these families and to the fabric of our life style.

To the degree that regulation and overhead burden increases on the use of student detasseling, the industry will, from need, move toward mechanized detasseling as much as possible. As fact, our company will add to our mechanical detasseler fleet this year; more than we probably would have if such regulations were not forced on us.

If we can provide information or assistance to you in your work with this legislation, we would be glad to. We appreciate your attention and we would like to receive a response from you. We urge passage of a Bill that will exempt the seed producers from FLCRA.

Very truly yours,

Thomas C. Hatfield
Treasurer

AMERICAN SEED TRADE ASSOCIATION

Board Resolution in Support of Amendments to Farm Labor Contractor Registration Act

RESOLVED that the Board of Directors of the American Seed Trade Association strongly opposes the over-reaching extension of the Farm Labor Contractor Registration Act to the hiring of non-migrant farm labor by seed growers;

FURTHER RESOLVED that the Association believes that this extension goes beyond any reasonable interpretation of the law, provides no public benefit, places an unnecessary compliance burden on the seed industry, and represents a waste of government resources;

FURTHER RESOLVED that the Association supports the enactment of H.R. 10053 (the McFall Bill), H.R. 8894 (the Sarasin Bill), or any other bill which would achieve the following basic objectives:

1. The exclusion from classification as a "farm labor contractor" (or as an employee of such a contractor) of any seedsman, employer, contract grower or independent labor crew organizer, with respect to any seed production or research activity, in which all of the workers who are substantially and regularly engaged in agricultural employment can return to their permanent homes each night;

2. The deletion of the word "personally" in Section 3 (b) (2) of the Act, which exempts farmers hiring workers for their own operations, so as to make it clear that the exemption extends to any employer hiring labor for his own farming operations, whether or not he is incorporated and regardless of whether there is more than one owner.

3. Deletion of the words "on no more than an incidental basis" from Section 3 (b) (3) of the Act, which exempts farm employees working solely for one employer, so as to make it clear that farm managers and personnel managers are not "farm labor contractors;" and also the provision of definitions which will make it clear that this exemption extends to any full-time seasonal or year-round employee whose activities are confined to one employer;

4. Revision of the definition of "migrant worker" in Section 3(g) to make it clear that the Act deals only with seasonal workers, and also (as a needed addition to H.R. 10053) to make it clear that a worker is a migrant only if he is unable to return to his permanent home at night, or is transported for a substantial distance from his permanent home to work each day in a vehicle controlled by a farm labor contractor; and

5. The provision of a definition of "transport" so that, with respect to the transportation of migrant workers, the Act will apply only to persons who have some degree of control over the transportation.

FURTHER RESOLVED that the officers of the Association are directed to express the views of the Association to the appropriate members and committees of the Congress, and to support or oppose such specific amendments to the Act as, in their judgment, may be in the best interest of the members of this Association and their employees, within the framework of this resolution.

Adopted February 11, 1978

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